Committee of Inquiry into Negotiation Procedures concerning Elementary and Secondary Schools of Ontario

Secretary: A.H. Dalzell

The Honourable Thomas L. Wells,
Minister of Education,
Province of Ontario.

Sir:

In accordance with Order-in-Council, 3406/70, dated November 5, 1970, the Committee of Inquiry Into Negotiation Procedures Concerning Elementary and Secondary Schools of Ontario is pleased to submit the following report for your consideration.

The Committee of Inquiry sincerely hopes, sir, that this report deals adequately with the designated terms of reference, that it will help, therefore, to develop sound relationships between teachers and school boards, and that, in particular, it will make a significant contribution to the maintenance of a healthy educational climate in Ontario.

R.W. Reville, Judge (Retired)
Chairman

B.S. Onyschuk
Member

L. Hemsworth
Member

Table of Contents

Order-in-Council

Copy of an Order-in-Council 3406/70 approved by His Honour the Lieutenant Governor, dated the 5th day of November, A.D. 1970, as amended by Orders-in-Council 3734/70 dated 3rd day of December, 1970 and 669/71 dated the 4th day of March, 1971.

"The Committee of Council have had under consideration the report of the Honourable the Minister of Education, dated November 5th, 1970, wherein he states that,

Whereas, it is deemed desirable to establish effective negotiation procedures between members of the teaching profession and the school boards of Ontario;

The Honourable the Minister of Education therefore recommends that His Honour Judge R. W. Reville, Judge of the County Court of the County of Brant be appointed as chairman, and that Mr. Lloyd Hemsworth, of the City of Toronto, and Mr. B. S. Onyschuk, of the City of Toronto, be appointed members of a committee,

(1) to inquire into and report upon,

(a) the process of negotiation between teachers and school boards, including

(i) the nature and length of agreements between teachers and school boards,

(ii) the establishment of appropriate time schedules for negotiation procedures in order to ensure adequate staffing of the schools,

(iii) definition of the bargaining units;

(b) the roles of the various professional and trustee organizations in the bargaining process;

(c) the matters to be properly subject to negotiation;

(d) any other related matters; and

(2) after due study and consideration, to make such recommendations with respect to the matters inquired into under the terms set out herein as the committee sees fit to the Minister of Education".

Preface

The Committee of Inquiry, on its appointment, took as its basic concept that conflict in teacher-school-board relationships should be, and can be, virtually eliminated. The Committee was able to adopt this approach to its deliberations because the history of relationships between teachers and school boards in Ontario has been characterized by truly remarkable rapport. Without legislative direction, teachers and school boards have developed a modus vivendi for their negotiations which has been notably successful in eliminating strife and rancour, and in achieving results which have recognized both the aspirations of the teachers and the public accountability of the school boards. Both teachers and school boards have exhibited, in the past, a degree of responsibility which has been the envy of those in other jurisdictions whose educational systems have been torn and rent by disruptive strikes and bitter conflict between teachers and school boards. In the last few years, however, a rift in the lute has developed. Negotiations between teachers and school boards have been unduly protracted in some instances. This in turn has led to increasing dissatisfaction with informal negotiation procedures. In addition, the increase in the size of school boards has led to a growing anxiety on the part of both teachers and trustees that their hitherto satisfactory relationships may deteriorate. All of this suggests that the development of professional negotiation techniques in this sphere have not been entirely satisfactory. The Committee, however, hopes to preserve and perpetuate the still subsisting rapport between teachers and school boards in Ontario by the recommendations in its Report.

The Committee has sought, in its Report, to attain two widely differing but related goals: the fair and just compensation of teachers and the recognition of the contribution which teachers as professionals can, and should, make to the educational system in the development of educational policy and its application in the classroom. To this end, it has recommended parallel procedures for the hopeful attainment of both goals. These procedures will be successful only to the extent that the parties for whom they are devised are prepared to make them work. The long standing goodwill and co-operation between teachers and school boards in this Province augurs well for their success in this endeavour.

The Committee wishes to point out in conclusion that it has adopted terminology, especially in reference to the negotiation process, which it considers appropriate to the professional relationships between teachers and school boards. This terminology is set down as a Glossary in Appendix A.

Acknowledgements

The Committee of Inquiry acknowledges its indebtedness to the many concerned, knowledgeable groups and individuals who contributed their time and talents to preparing briefs, making submissions, and offering the Committee the benefit of their expertise in the complex field of teacher-school-board relationships.

In response to advertisements in key cities of the Province, sixty-one briefs were submitted to the Committee. The organizations and individuals submitting briefs are listed in Appendix D.

The Committee examined data and applicable legislation from the nine other Provinces of Canada, from many States of the United States of America, and from the countries of England, Australia, New Zealand, Belgium, The Netherlands, Norway, Sweden and the Republic of Germany.

Public Hearings were announced through the co-operation of the news media, and were conducted by the Committee in Toronto, Sault Ste. Marie, Thunder Bay, Timmins, Sudbury, North Bay, Ottawa, Hamilton, St. Catharines, Kitchener, London, Windsor, Peterborough, Kingston and Owen Sound. There were seventy-six presentations at these hearings. Those who made these presentations are listed in Appendix F.

In addition to the Public Hearings, the Members of the Committee interviewed knowledgeable and experienced persons in Toronto, Ottawa, Montreal, Edmonton, Calgary, Vancouver, Victoria, San Francisco, Sacramento, San Diego, Albany, New York City, Washington D.C., and London, England, as well as Belfast, Northern Ireland. Those interviews are listed in Appendix G.

Finally, the Committee wishes to express its grateful appreciation to its Research Assistant, Miss Nadine Duncan; and to its Secretary, Mr. Hugh Dalzell, without whose experience, knowledge, and indefatigable zeal this Report could hardly have been written.

Recommendations

The **Conclusions and Recommendations** of the Committee of Inquiry are explained and stated in Chapter 12.

The main recommendations are listed here for ready reference. The rationale upon which these recommendations are made is discussed in the pages that follow.

Recommendation 1
That the negotiating entities consist on the one side of the teachers employed by a local school board, and on the other side of the local board of trustees.

Recommendation 2
That, where the parties agree by mutual consent, negotiations be conducted on a regional basis.

Recommendation 3
That the negotiating entity include all certificated personnel except the supervisory officers of the school board.*

Recommendation 4
That, on a majority vote, the principals in a local jurisdiction form their own negotiating entity.

Recommendation 5
That the negotiating authority for teachers be a representative committee of the local teaching staff employed by the school board and that the negotiating authority for the school board be a committee of trustees or such other persons as the trustees shall determine.

Recommendation 6
That the scope of negotiations be limited to items of compensation as defined in this Report.

Recommendation 7
That a Professional Research Bureau be established to collect, collate and disseminate pertinent data on a regular basis to both parties and to the Adjudicative Tribunal hereafter recommended; and

That such Professional Research Bureau be under the direction of a joint committee on research composed of ten members, five teacher representatives and five trustee representatives selected respectively by the Ontario Teachers' Federation and the Ontario School Trustees' Council; and

That the chairmanship alternate between teacher and trustee representatives year by year; and

That the initial permanent staff be composed of a research director and a secretarial assistant; and further

That the Professional Research Bureau be financed through the budget of the Ontario Ministry of Education.

Recommendation 8
That a persistent disagreement between the parties as to any of the items that are subject to negotiations be referred to an adjudicator who is a member of a permanent Adjudicative Tribunal consisting of a chairman, one or more vice-chairmen and a number of part-time members, appointed by the Lieutenant Governor-in-Council on the advice of the Minister of Education, and financed by the Government of the Province of Ontario through the budget of the Ministry of Education; and further that the decision of the adjudicator be final and binding on both parties.

Recommendation 9
That the establishment of the School Board Advisory Committee under Part IX of the Schools Administration Act be made obligatory.

Recommendation 10
That Sections 85. and 86. of Part IX of the Schools Administration Act be amended:

1) to provide that the School Board Advisory Committee shall consist of

a) Four members of the school board appointed by the school board;

b) Four teachers employed by the board appointed by the teachers in the employ of the board;

c) Two persons appointed under subsections (2) and (3) of Section 85.;

2) to provide that the chairmanship shall alternate from year to year between the teacher and the trustee members; and

3) to include a clause requiring this Committee to meet at least six times in a calendar year.

Recommendation 11
That the School Board Advisory Committee establish a number of area advisory committees, being sub-committees of the School Board Advisory Committee, representing families of schools, and that each area committee shall function under the chairmanship of an area superintendent or similar official, and shall consist of

a) Not more than two school principals;

b) Not more than eight teachers, representing a cross section of responsibilities and schools;

c) And not more than four representatives of the Federation of Catholic Parent-Teacher Associations or the Home and School Council in the same proportion as provided in Section 85.

*Committee Member Hemsworth would include school principals in the supervisory or administrative staff, would accord them official managerial status, and would designate them as chief executive officers in their schools.

Recommendation 12
That the area advisory committee receive submissions from school staffs in its area and forward these submissions to the school board advisory committee with its own recommendations or comments.

Recommendation 13
That the teaching staff of a school, under the leadership of the principal, formulate resolutions concerned with educational policy and professional duties, and forward these to the appropriate area advisory committee.

Recommendation 14
That the school board advisory committee establish such other sub-committees as it may deem advisable for the consideration of any specific matter dealing with educational policy or professional duties, as now provided in the Schools Administration Act.

Recommendation 15
That no restrictions be placed on matters open to consultation, except insofar as matters pertaining to individual personnel problems, and that the provisions of Section 88.(2) of the Schools Administration Act be amended accordingly.

Recommendation 16
That the provisions of Section 88.(3) of the Schools Administration Act be amended to provide that the school board shall not reject any recommendation of the school board advisory committee without giving the committee an opportunity to be heard and further without giving reasons for the rejection.

Recommendation 17
That all other necessary amendments to Part IX of the Schools Administration Act be made where necessary to give effect to the recommendations of Chapter 9 of the Committee of Inquiry's Report.

Recommendation 18
That the Minister of Education convene and chair at least once a year a Standing Consultative Conference, that this body have two permanent honorary secretaries chosen respectively by the Ontario Teachers' Federation and by the Ontario School Trustees' Council, and that the composition of the Standing Consultative Committee be along the lines suggested in this Report.

Recommendation 19
That the form of the individual teacher's contract prescribed by the regulations to the Department of Education Act be amended to specifically refer to, and incorporate into the contract, the terms of the professional agreement, and further that a statutory provision to the same effect be inserted into paragraph 11. of sub-section (1) of Section 12. of the Department of Education Act.

Recommendation 20
That the length of the agreement be left to the discretion of the parties involved, but that the minimum length be one year from date of signing.

Recommendation 21
That the time limits for the conclusion of successive steps in the negotiation process be left to the discretion of the parties involved.

Recommendation 22
That a paragraph 12. be added to Section 33. of the Schools Administration Act to make it a duty of a school board to enter into negotiations on compensation with the teachers in the board's employ when requested to do so by a majority of the teachers and to conclude a professional agreement with these teachers, so that the said paragraph 12. of Section 33. of the Schools Administration Act would read as follows:

"Every board shall . . .
12. Enter into negotiations on compensation with teachers in its employ, when requested to do so by a majority of the said teachers, and conclude a professional agreement."

Chapter 1
Teaching Is A Profession

Although teachers often feel that society in general has been reluctant to recognize teaching as a profession and to accord it the respect it deserves, teaching is, by its very nature, the master profession. Indeed, were it not for teachers, no other profession would be able to exist: accredited professionals such as doctors, dentists and lawyers all are indebted to the teachers who assisted them to acquire skills and knowledge intrinsic to their own respective professions.

Teaching's claims to professionalism are essentially indisputable. According to the norms outlined by Edward Gross in *Work and Society,* teaching satisfies the six fundamental criteria of a profession. The teacher possesses both generalized knowledge and also "an intimate familiarity with the individual case based on experience and insight". This latter type of knowledge must be applied in order to solve particular problems as they arise, each of which differs somewhat from similar problems. Thus the teacher, not unlike the doctor, finds each case unique.

Inherent in any profession is the extra degree of personal involvement demanded of the professional. The teacher must develop a relationship of trust and confidence with each student, just as the lawyer must command the respect of his clients. Correlative with this is another aspect of the relationship between professional and client, or teacher and student. The teacher possesses wide knowledge of a specialized technique. The student comes, ignorant, in search of knowledge, and it is in the teacher's ability to communicate information to him that his power lies.

The concept of professionalism must, by necessity, imply a sense of obligation to one's work. The teacher concentrates on the efficiency of his technique and on constant improvement of his performance. Matters such as remuneration, or the race or religion of pupils are relegated to a position of secondary importance. Notwithstanding, the desire to improve one's financial status is not necessarily incompatible with one's obligations to his profession, but may indeed be fundamental in maintaining the high degree of excellence expected of that profession. Nevertheless, society demands that any such attempt be carried out in a professionally irreproachable manner.

The teacher has claim to professional status also because of his strong sense of colleague consciousness. This manifests itself in a concern with and a desire to improve admission qualifications, and in the development of a professional organization to promote the profession in the eyes of the public and to protect its membership.

Finally, teaching assumes the proportions of a profession insofar as it is a service which is vital to the welfare of society: its very importance is embodied in the fact that it is, above all, the master profession.

The members of the Committee of Inquiry wish to make it clear that they concur with these criteria and their applicability to the profession of teaching. They also believe that teachers in Ontario aspire to a high degree of professionalism in their work. Consequently, the following report and recommendations were formulated in this light.

Reference (See Bibliography)
1. Gross: In Chapter 3, Gross discusses facets of the occupational work structure and examines the axis of professionalization, from which these criteria have been adopted.

Chapter 2
The Ontario Educational Setting

Many words have been written about the value and importance of education in society. The Committee of Inquiry supports the general consensus that each individual should have the opportunity to receive the type of education suited to his needs and earnest desires. The Committee believes that the Province of Ontario has designed an educational system which is eminently qualified to satisfy the aspirations of all individuals and that the members of the teaching profession and school board trustees have played significant and laudable roles in this development. Nothing, therefore, must be allowed to disturb the efficiency and proper functioning of the educational system, and it is to this end that the Committee has directed its efforts.

As background to the Committee's understanding of the situation and to the reader's orientation to succeeding chapters, the following summary of the educational setting in Ontario has been complied.

Statistical Information

With a population of 7,750,000 in 1970, Ontario had 2,022,401 students and 93,000 full-time teachers. This latter figure represents 3.08 percent of the total labour force. The following table illustrates the growth of the pupil and teacher population over the past ten years.

Group	1960	1965	1970
Elementary Pupils	843,737	949,374	1,047,055
Elementary Teachers	28,070	32,783	42,451
Secondary Pupils	262,775	418,738	556,913
Secondary Teachers	11,478	21,659	33,693
Separate School Pupils	282,651	370,669	418,433
Separate School Teachers	8,463	12,184	16,856
Total Pupils	1,389,163	1,738,781	2,022,401
Total Teachers	48,011	66,626	93,000

As a result of this increased pupil enrolment, educational finance has become an important government function. In 1970, for instance, the school boards spent $1,650,642,000, of which 51.84 percent was provided by the Provincial Government in the form of general legislative grants. For 1971, the estimated expenditure is $1,790,385,000 and the estimated percentage to be provided by grants is 55.77. About 28.6 percent of the Province's entire budget is devoted to elementary and secondary education.[1]

The following table illustrates changes in the cost of education between 1960 and 1971:[2]

Type of School	1960	1965	1970	1971 Estimates
Elementary	$280,956,090	$455,679,000	$973,256,000	$1,046,022,000
Average Daily Attendance	999,058	1,178,716		
Average Daily Enrolment			1,385,307	1,373,017
Cost Per Pupil	$281.22	$386.59	$702.56	$761.84
Secondary	$121,030,371	$296,876,000	$677,386,000	$744,363,000
Average Daily Attendance	208,667	371,689		
Average Daily Enrolment			541,416	562,263
Cost Per Pupil	$580.02	$798.72	$1251.14	$1323.87

The Government of Ontario has placed certain limitations on the expenditures of school boards. The limits on ordinary expenditures in 1971 were $545.00 per elementary school pupil and $1,060.00 per secondary school pupil, each adjusted by course and location weighting factors. In 1972, these limitations will be $595.00 per elementary school pupil and $1,100.00 per secondary school pupil adjusted by expenditure weighting factors that reflect each board's educational needs. In 1973, the limitations will be $630.00 per elementary school pupil and $1,130.00 per secondary school pupil. In addition, boards are permitted to make expenditures for transportation and debt charges, the need for which varies considerably from jurisdiction to jurisdiction.

In 1969, the total cost per pupil based on average daily enrolment was $623.00 for elementary schools and $1,154.00 for secondary schools. In 1970, these figures were $703.00 for elementary schools and $1,251.00 for secondary schools. The figures for 1971 were not available at time of writing because the annual financial reports of school boards for 1971 will not reach the Ministry of Education until April and May of 1972.

Responsibility for education is assigned to the provinces by the British North America Act. The provincial government provides legislation, funds and services to promote the cause of education. It delegates authority to local school boards, while exercising a measure of control.

The Ontario Ministry of Education is responsible for the provision of educational opportunities for all the people of the Province of Ontario. As the central education authority, the Ministry sets overall policy and does long range planning. It has the legislative function of creating units of administration, providing for the election of school boards, and prescribing the duties of school boards. It has the financial function of distributing legislative grants to assist school boards to provide the necessary services and to reduce the tax burden on local ratepayers. It assists the institutions responsible for the training of teachers and it controls the certification of teachers. It performs a resource and leadership function, through consultants who have specialized skills and knowledge, for school trustees, officials and teachers, in fields such as curriculum, architectural services, summer courses and in-service professional training, and public information. "The broad aims of the Department are to provide a system with flexibility, diversity and personal involvement, offering each student and adult the freedom to choose and learn according to his needs, interests, and capabilities."[3]

The actual operation of the schools is delegated to 186 school boards, which are responsible for 4,817 schools. Of these boards, 76 are operating both elementary and secondary schools, 49 are Roman Catholic separate school boards operating elementary schools, and the remaining 61 are boards operating relatively small schools in northern communities, in hospital and treatment centres, or on Crown lands. Consolidation of school jurisdictions has taken place at a rapid rate: in 1960, there were 3,676 school boards managing 7,482 schools, and in 1965, 1,673 school boards managing 6,206 schools. In 1968, just prior to the major consolidation, there were still 1,446 school boards in Ontario.

Each school board is given certain powers and duties by statute. The school board is the agency which adapts or develops programs, employs personnel, establishes local priorities and exercises local control within its statutory powers and duties.

The educational system is based on lay control. Teachers and school board executive and education officers are prohibited from serving as members of the school board by which they are employed. With a few exceptions, the members of a board are local citizens elected by the electors of the jurisdiction. Ideally the board is a policy-making body. The implementation and application of its policies are delegated to the Director of Education or Superintendent of Separate Schools as the case may be, the supervisory and administrative staff, and to the principals.

From the above-mentioned figures and facts, it becomes readily apparent that education in Ontario is an important matter. It follows that there should be, and is, legislation which governs specific areas of the educational field. Both teachers and trustees are subject to pertinent sections of the schools acts and the regulations issued under them.

The Department of Education Act defines the powers of the Minister of Education, including the power to prescribe the form of contract entered into by a teacher and a school board, and the power to prescribe the method of calculating grants to school boards. *The Schools Administration Act* defines the duties of teachers, the duties and powers of school boards and the grievance procedure (School Trustees' and Teachers' Board of Reference) to be followed in cases of disagreement regarding termination of a teacher's contract. *The Public Schools Act, The Separate Schools Act* and *The Secondary Schools and Boards of Education Act* establish units of school administration and detail the financial powers of school boards.

It should be pointed out that not one of the above acts refers either directly or indirectly to collective bargaining procedures for teachers, nor do they make mention of negotiations between teachers and school boards. In addition, teachers are specifically excluded from those groups governed by *The Labour Relations Act.* This absence of legislation is a somewhat curious fact, inasmuch as salaries paid to classroom teachers constitute a full 60 percent of a board's entire budget, and since the salaries and conditions of work will, to a large extent, determine the atmosphere in the classroom and the quality of teaching.

The traditional method of determining salaries and working conditions and two additional pieces of legislation respecting teachers and school boards *(The Teaching Profession Act* and *The Ontario School Trustees' Council Act)* must be examined in the context of the history of education in Ontario in order to grasp their true significance.

The History of Teachers and School Boards in Ontario

Early History (1786-1917)

According to a number of sources consulted, education and the profession of teaching in common with other public services faced adverse conditions in their early beginnings in Ontario.

The first English schools in Upper Canada (later Ontario) were private schools supported by the United Empire Loyalists who valued the importance of education. These schools were taught by Church of England clergymen, such as the Reverend John Stuart who started an English school in Kingston in 1786 – 110 years after the establishment of a French school in the same location when it was called Fort Frontenac – and the Reverend John Strachan who operated grammar schools in Kingston, Cornwall and York (later Toronto). Other teachers were American-born, such as Richard Cockrell who opened a school at Newark (later Niagara-on-the-Lake) in 1796 and subsequently one in Ancaster. These men were of high calibre, but apparently not all teachers were, for Cockrell in his "Thoughts on the Education of Youth" was deeply agitated about the regrettable lack of competence in the teaching profession in Upper Canada. The concentration, of course, was upon the establishment of grammar schools, with the result that elementary schools were scarce and in fact were generally considered to be unessential in a society in which the pioneers were more concerned about clearing the land and the life and death struggle to eke out a living. In this period education was available only for the children of parents who could pay the fees.

The first attempt to extend education to everyone was the passing of the Common School Act of 1816. It was soon apparent that it was a feeble step forward. The Act provided that the residents of any town, village or township who were able to gather together twenty students could have a school and the government would grant £25 per year towards the salary of a teacher. (The grant towards a grammar school teacher's salary was £100 per year). The residents had to build and maintain the school and the parents had to pay fees which were often more than many could afford. Three elected trustees administered each school and staffed it. The record shows that they were often careless in their choice of teachers, but, at the same time, that they could offer little incentive to attract good applicants. In 1820 the £25 grant was reduced by one half, and in 1833 a select committee of the Legislative Assembly reported that many teachers were receiving £5 or less per year while common labourers were earning £75 per year. This situation led the late Dr. J. G. Althouse to write that "a teaching post was commonly regarded as the last refuge of the incompetent, the inept, the unreliable."[4]

It was Egerton Ryerson who, as Superintendent of Schools for Canada West (renamed Ontario in 1867) from 1846 to 1873, strove to implement reforms and generally improve the conditions and the quality of teaching. Previous to his appointment, while serving as Assistant Superintendent, he visited Horace Mann, the great American educator, in Massachusetts and spent fourteen months in Europe, where he was impressed most by the educational systems in France, Ireland, and Prussia. On his return his report led to the passing of The Common School Act of 1846, which along with succeeding legislation especially that of 1871, provided for free and universal elementary education and the basic foundations of the present educational system in Ontario. It should be noted, however, that the Act of 1871 did not provide for free and compulsory secondary school education, since sixty percent of Ontario high schools charged fees until 1905 and the compulsory school leaving age of sixteen was not enforced until 1919.

Ryerson insisted that the Act of 1846 establish a normal school to ensure a supply of trained teachers and hence, in his view, better schools. He insisted also upon a system of supervision and inspection to raise standards of teaching performance and to guide and inspire teachers.

Nevertheless, even under Ryerson's informed and forceful leadership, reform was often slow and certainly not universal. In 1850, Ryerson had to take over the grammar schools, many of which had declined to the level of elementary schools, often to the point where they were taking in pupils unable to write. A recent publication, which seems to have been carefully researched, states that the elementary school teaching profession did not achieve status in all the long years between Confederation in 1867 and the beginning of World War I in 1914. The folliwng is a quotation from this book:

"Shortages of teachers during the period . . . low salaries, unreasonable teaching loads, and intolerable working conditions all resulted in poor professional standards. In the years immediately following Confederation a young girl still in her teens or a discharged non-commissioned officer who could find nothing better to do could almost always find a job "keeping" a one-room school. With little training behind them, such teachers could resort to little more than an insistence on rote memorization of material with frequent applications of the rod if the pupil's memory was less than perfect . . .

When the normal school graduate sought his first position, he (or more likely, she) found that salaries and conditions of employment were far from attractive. By the beginning of the twentieth century male teachers were averaging only $400 per year and women $300. Many local school boards and trustees competed, not for the most competent of teachers, but for the cheapest, that is, those whose limited training and knowledge entitled them to the lowest class of certificate and thus the lowest salaries. Teachers themselves contributed to the cutting of salaries as boards encountered little opposition when they asked candidates to "state salary required" or to "send in tenders." Provincial authorities began imposing minimum salaries on local boards and raising grants to those boards that paid more attractive salaries, but the general salary picture did not noticeably improve until the rise of teachers' federations after World War 1."[5]

The above quotation is not meant to suggest that there was a paucity of dedicated teachers bringing competence and respect to the profession. Certainly there were many excellent teachers and good school systems. One has only to look at the reforms brought about by James Hughes, Inspector of Public Schools for the City of Toronto from 1874 to 1913, to get a balanced viewpoint. Nevertheless, the quotation does pinpoint a situation which was all too prevalent before 1914, which discouraged even the dedicated teachers, and which provided fertile soil for the development of teachers' organizations. The final statement in the quotation implies that the improvement of teachers' salaries after World War I was due to the rise of teachers' federations. This statement is debatable, because many other factors were involved, but the irrefutable point is that there was a desperate need for the teaching profession itself to unite in a more determined manner in the interests of education in general.

The Development of Teachers' Organizations (1918-1944)

Prior to World War I, the major teachers' organization in existence was the Ontario Educational Association; it was more concerned, however, with the philosophical aspects of education than with the improvement of the teacher's lot. Membership was not restricted to teachers, but was open to all those who expressed an interest in education. Several small groups limited to teachers did exist during the late nineteenth and early twentieth centuries; the effect of these on the profession of teaching, however, was negligible.

In the light of the generally unsatisfactory conditions in the educational system, it is not surprising that, once initiated, teachers' organizations developed rapidly. The rise of the three most powerful affiliates of the Ontario Teachers' Federation as it exists today was not spontaneous, but well motivated by existing factors. The inflation brought about by World War I, along with changing philosophies about the value of education and individual equality, made teachers realize that they must take determined measures to protect their profession and themselves. If it were to have any effect at all, this effort had to be made collectively. Following this line of thought, three of the provincial organizations were formed within two years of the termination of the war: the Federation of Women Teachers' Associations of Ontario was the first in 1918, then the Ontario Secondary School Teachers' Federation in 1919, and the Ontario Public School Men Teachers' Federation in 1920. Starting in small, clandestine meetings for fear of reprisal from the school boards, these organizations rapidly increased in size and strength. In 1920, the Metro Toronto high school teachers "claimed" their first collective victory — a 25 percent salary increase.

The early optimism and success of the provincial organizations was marred during the 1920s and '30s by a number of setbacks. Internal problems developed, thus limiting the strength which the teachers had united to attain. After the initial period of development, membership was low and unenthusiastic. Too many teachers were interested not in membership, but only in the enjoyment of improved salaries and working conditions achieved by the organizations. In addition, members were scattered all over the province, communications were poor, and financial resources extremely limited. Any modest gains that were made by these organizations, such as the establishment of minimum salaries, were quickly lost during the years of the Depression. The effects of the Depression, of course, were debilitating for teachers and their organizations: both salaries and membership dropped drastically.

The hardships suffered by teaching organizations during the Depression had a catalytic influence on the most important victory of the teachers in Ontario, as well as in other provinces. In 1935, Saskatchewan passed legislation which provided for compulsory membership of all teachers in the Saskatchewan Teachers' Association, and, in the following year, Alberta followed suit. In Ontario, where the effects of the Depression had not been as devastating, eight years later, in 1944, *The Teaching Profession Act* was passed.

Even at the outset, the Act was extolled by teachers and all those with a serious interest in education as a means of upgrading the teaching profession. The Prime Minister of Ontario at the time, George Drew, spoke of the Act in glowing terms:

"I believe it is an important Act to raise the status of the teachers. They have reason to believe they were going to get some such encouragement for their work and I personally am very strongly in favour of this Act."

The Teaching Profession Act was originally intended to raise the standards and quality of teaching and to help the teachers gain recognition of their long-ignored professional status by means of additional organizational and financial strength. Few at the time, however, realized its full ramifications. In order that all teachers would be represented in the newly formed Ontario Teachers' Federation, two new organizations, the Ontario English Catholic Teachers' Association, which was formed in 1939, and l'Association des Enseignants Franco-Ontariens, formed in 1944, were given affiliate status, along with the three original provincial organizations. The Act also provided for automatic deduction of membership dues by the school boards.

Teachers were now in a far better position to assert their role in the educational power structure which, up to this time, had been monopolized by the Government and the school boards. In 1931, they had successfully obtained a standard contract – that is, each teacher was to have an individual contract to be signed by both teacher and school board official. By 1941, the use of this contract became compulsory for all school boards. With the passing of *The Boards of Reference Act* in 1938, teachers won tenure security and could appeal what they considered to be unjust dismissal. Thus fortified by the standard contract, the board of reference in the case of a disputed dismissal, and compulsory membership in the Ontario Teachers' Federation as a sine qua non of holding a teaching position in Ontario, by the end of 1944 the teachers possessed the means of becoming a very significant force in education.

Recent Developments (1945-1970)

More financial support was given to education in 1945, when the Government of Ontario promised to pay 50 percent of all educational expenses in order to reduce the burden of the local taxpayers and to increase teachers' salaries. The only factor which prevented teachers from engaging in collective bargaining was the large number of autonomous school boards across the Province. Nevertheless, conditions improved significantly after World War II with the discontinuation of the Wartime Prices and Trade Board, the gradual assertion by the teachers of their rights, and the improved financial situation of the provincial organizations which allowed them to employ full-time secretaries.

The influence of teachers upon the educational sphere was strengthened by two additional factors – the post-war baby boom, resulting in a shortage of teachers which would last for the next two decades, and the invention of the 'pink' and 'grey' letter sanctions which the teachers' organizations could impose on school boards to persuade them to accede to their requests. The impetus provided by these two letters contributed largely to the major breakthroughs made by teachers during the next twenty years, and it can be said that this marked the beginning of professional negotiations in earnest between teachers and school boards.

It was in 1947 in Bowmanville that the use of the 'pink' or 'grey' letter came into existence. The teachers, unwilling to strike, felt they must have some means whereby they could exert pressure on school boards which refused to negotiate an agreement satisfactory to them. The 'pink' and 'grey' letter, printed on pink paper in the case of the Ontario Secondary School Teachers' Federation, or on grey paper in the case of the Federation of Women Teachers' Associations of Ontario and of the Ontario Public School Men Teachers' Federation, is sent to all members of the affiliate when negotiations with a particular board break down. The letter advises the members of the reasons for its issuance and warns the members that, although it is not considered unprofessional to accept a position with the school board in dispute, if they do so, they will not receive any support from their affiliate if they should in the future have a dispute with the board. This sanction, sometimes accompanied by mass resignations by the teachers employed by the board in dispute to take effect at the end of the school year, has been effective in persuading school boards to negotiate further with the teachers.

As a result of what the trustees considered to be imbalance of power, the six existing trustee organizations joined together in 1949 and were incorporated into the Ontario School Trustees' Council in 1953. The groups that joined were: The Ontario Urban School Trustees' Association, The Ontario School Trustees' and Ratepayers' Association, The Public School Trustees' Association of Ontario, The Ontario Separate School Trustees' Association, l'Association des Commisssion des Ecoles Bilingues d'Ontario and the Associated Secondary School Boards of Ontario.

Originally designed to counterbalance the united strength of the Ontario Teachers' Federation, the Ontario School Trustees' Council admits that it has not really succeeded. The Ontario School Trustees' Council is a voluntary organization and has no powers of discipline over members who choose not to adhere to its policies. Forthermore, the Council receives neither the same financial support nor the same enthusiasm from its members as does the Ontario Teachers' Federation, since trustees are only fulfilling a public office and receive no personal profit from the provincial organization. For a number of years, the rivalry between individual boards at hiring time brought about by the teacher shortage has resulted in less co-operation between boards and, consequently, less unity.

Summary

Over the past two decades, teachers have thus occupied a relatively advantageous position with respect to professional negotiations. They seem to feel that they have made significant progress in the amelioration of salaries and working conditions, though some of the statistical information in Appendix C suggests that such progress has

kept pace only with the wealth of the economy and with the financial gains of individuals in other sectors of the country.* Teachers have had considerable success, however, in achieving salary agreements in the form of written memoranda signed by both parties and in extending the scope of negotiations gradually to include discussion of such matters as conditions of work and the determination of broad educational policy.

Nevertheless, change has come about slowly and has not progressed at a uniform rate across the province. The protracted length of teacher-school-board negotiations and the increasingly frequent imposition of sanctions on school boards by the teachers suggest that the development of professional negotiation techniques in this sphere has not achieved entirely satisfactory results.

References (See Bibliography)

1. McKeough, 1971 Budget: Table C3, pages 97-99.

2. Reports of the Minister of Education for 1961, 1966; material assembled in Ministry of Education for 1971 Report.

3. Ontario Department of Education: "Education in the Province of Opportunity." (pamphlet)

4. Althouse: *The Canadian Teacher,* page 5.

5. Wilson, Stamp, Audet: *Canadian Education: A History,* pages 316-317.

6. A number of sources, especially: newspaper accounts written at the time of the passing of The Teaching Profession Act; French's *High Button Boot Straps;* and various briefs presented to the Committee.

*Mr. Onyschuk does not agree with this interpretation of the statistical data, and his comments are found on page 63.

Chapter 3

A Brief History of Recent Negotiation Developments

Negotiation Procedures

Although there is no specific legislation in this area, negotiations between teachers and school boards have developed spontaneously over the years and are now quite sophisticated. A series of "gentlemen's agreements", taking the form of exchanges of letters between the Ontario Teachers' Federation and the Ontario School Trustees' Council, have established the "common law" governing the relations in regard to negotiation procedures between teachers and school boards. Indeed it is to the credit of both the teachers and trustees that negotiations have taken place over the length and breadth of the province, year after year, with generally satisfactory results. The story of the last few years, however, indicates that present procedures have lost some of their efficacy and some amelioration is needed. At this point, it would be a useful exercise to consider the history of recent negotiations as a background to the appointment and work of the Committee of Inquiry.

As previously mentioned, the outcome of negotiations is most often acceptable to both teachers and trustees alike; however, several times in the recent past, negotiations have failed to produce a satisfactory agreement between the two parties. When this occurs, the affiliates of the Ontario Teachers' Federation have notified their membership, by means of a "pink" or "grey" letter, that negotiations with a particular school board have broken down and have stipulated that any teacher who accepts a position with the board involved in this dispute would surrender any support he might otherwise expect from his affiliate. It should be pointed out that a "pink" or "grey" letter has been accompanied sometimes by mass resignations of the teachers employed by the board to take effect at the end of the contract year. The teachers of Ontario devised this sanction in the late forties and considered it an effective device for exerting pressure on school boards to accede to their requests.

The 1970 Impasse in Metropolitan Toronto

During the 1969-70 school year, a situation developed in Toronto which disrupted negotiations across the province. The teachers demanded the right to negotiate what they called "conditions of work for quality teaching", that is matters other than compensation. The adversaries were, on the one hand, 7,500 secondary school teachers in the City of Toronto and the Boroughs of East York, Etobicoke, North York, Scarborough and York, supported by more than 26,000 members of the Ontario Secondary School Teachers' Federation, and, on the other hand, the Metropolitan Toronto School Board, supported by the Ontario School Trustees' Council. The dispute began in earnest on January 28, 1970, when the teachers of Metropolitan Toronto presented their salary brief to the Metropolitan Toronto School Board. It asserted the right of teachers to negotiate "conditions of work related to quality teaching" and demanded additional salary increases and fringe benefits apparently amounting to 35 percent. The Metropolitan Toronto School Board refused to negotiate "conditions of work for quality teaching" and proposed a one percent salary increase.

Subsequently the Provincial Executive of the Ontario Secondary School Teachers' Federation took over the Metro salary negotiations and "pink-listed" the Metropolitan Toronto School Board. The Metro Headmasters' Association promised to support the "pink-list" by refusing to engage new staff members; the sanction was also honoured by the elementary school teachers. In response to the "pink-listing", the Ontario School Trustees' Council declared a province-wide moratorium on hiring teachers until April 4th. This meant that no teaching positions would be advertised or offered until that date. On March 23rd, this hiring ban was extended to April 24th.

After a teacher-trustee committee had agreed that a bare minimum of 83 additional teachers was needed for the succeeding school year, the Metropolitan Toronto School Board offered to hire only 64 more teachers. This proposal was rejected by the teachers. The Ontario School Trustees' Council replied by extending the moratorium indefinitely. Teachers in Renfrew County protested the moratorium by staging wild-cat walkouts; at one school, for example, 46 teachers from a staff of 60 reported that they were sick.

On May 3rd, 8,000 teachers gathered in Maple Leaf Gardens to hear the past president of the Ontario Secondary School Teachers' Federation ask for the resignation of all Metropolitan Toronto secondary school teachers. As a result he soon had over 6,000 resignations in his hands. The Metropolitan Toronto School Board was no doubt aware that it would be difficult, if not impossible, to replace 84 percent of its teachers by September; consequently, the board agreed to hire the 83 additional teachers requested.

Although the members of the Toronto Headmasters' Association urged their staffs to accept a revised salary offer proposed by the board, this offer was rejected on May 27th.

May 29th was "Resignation Day", since May 31st fell on a Sunday; however, the mass resignations were not submitted to the school boards. On June 9th, the Metro teachers rejected another salary offer, and the Ontario School Trustees' Council advised school boards in the Province to start hiring College of Education graduates. On June 11th, the Provincial Executive of the Ontario Secondary School Teachers' Federation withdrew from the Metro bargaining and removed the "pink-list". At the same time, the moratorium was lifted, and, as previously agreed upon, the Minister of Education extended the resignation date to June 30th, 1970, to allow teachers time to resign and find positions with other boards if they wished to do so.

One of the most difficult crises in the history of teacher-school-board negotiations in Ontario had come to an end; nevertheless, negotiations were still drawn out, in some cases into the spring of 1971. More important yet, the failure to decide whether "conditions of work for quality teaching" were negotiable cast a foreboding shadow over future negotiations.

Appointment of the Committee

It was in this climate and at this point in time that the Honourable William G. Davis, then Minister of Education, arranged for an Order-in-Council, dated November 5th, 1970, providing for the appointment of the Committee which has prepared this report.

Negotiations During 1971

Throughout the Committee's study and enquiry, the members naturally followed the course of negotiation events, especially during 1971, with close interest. Several trends had considerable impact upon their thoughts and ultimate conclusions.

The large number of agreements, unsettled by the end of June, 1971 and carried over to the fall months for future negotiations, was significant. On the one hand, this trend may have been evidence that many people were looking forward to the publication of this Report and the assistance it might offer, but, on the other hand, the difficulty in negotiating settlements undoubtedly corroborates the need for this Report and especially for a better way of achieving prompt and fair agreements.

The Committee of Inquiry also noted, with dismay, the introduction on considerable scale of the "work-to-rule" technique by secondary school teachers to enforce their demands. For example, about 417 Wentworth County secondary school teachers used "work-to-rule" tactics from the beginning of the school term in September (having voted to do so in June) until September 20th; approximately 488 Frontenac County secondary school teachers used the same technique from September 10th to September 16th until both trustees and teachers agreed to submit their dispute to a conciliation board; and about 1200 Hamilton secondary school teachers, who agreed to a contract on September 7th, had threatened to use "work-to-rule" unless the terms were satisfactory. The Committee of Inquiry was greatly concerned about these events, first because only the students were the "losers", and secondly because the tactic appears to be illegal. The Committee, of course, does not want to make a legal judgement at this point, because that could be done only by a court of law, but it does want to point out that the Regulations provide that "A principal shall . . . subject to the approval of the board, appoint one or more of the teachers for supervisory duty . . . and arrange for the supervision of any other school activity authorized by the board . . . ",* and further that "A teacher shall . . . carry out the supervisory duties assigned by the principal."**

On November 30th, 1971, 84 out of 105 secondary school teachers employed by the Fort Frances-Rainy River Board of Education submitted resignations en masse to take effect on December 31st following, and at the same time the Ontario Secondary School Teachers' Federation "pink-listed" the school board. On December 1st, The Ontario School Trustees' Council issued a "Flash Bulletin" to all Ontario School Boards asking the latter to refrain from engaging any secondary school teachers employed by the Fort Frances-Rainy River Board of Education. It was the Toronto impasse repeated. Of course, a settlement was reached before the opening of school in January. Probably each side has claimed the victory. The Committee of Inquiry, however, has grave doubts that the negotiation process was effective for either side, and further can hardly tolerate thoughts of the wasteful expenditure of time and effort that must have been expended by both sides and of the bitterness and acrimony that must have built up between individuals who should be co-workers in the education enterprise in the District of Rainy River and among the citizens of the community.

The events of 1971 have reinforced the Committee of Inquiry's conviction that a model is needed for negotiations between teachers and their employers which will render unnecessary the degrading techniques of the past and will ensure teacher-school-board relationships worthy of teacher professionalism and trustee responsibility.

References

1. *Monday Morning,* September – October, 1970: pages 11 - 12. (Dependence upon the details in this article is acknowledged).

2. Clippings from Toronto newspapers, assembled in Supervision Branch, Ontario Department of Education, October 1969 to May 1970.

* Regulation-Elementary and Secondary Schools – General (OR339/66): pages 8-9.

** Ibid: page 24.

Chapter 4

Teacher-School-Board Relationships in Other Jurisdictions

The Committee of Inquiry solicited and received information from a significant number of other jurisdictions. It has studied existing legislation in these jurisdictions, and has visited knowledgeable groups and individuals in some of them. The situation in Ontario regarding teacher-school-board relationships may be seen in clearer perspective by summarizing pertinent elements of the corresponding situations in a representative selection of other jurisdictions.

The Province of Alberta

The School Act 1970 specifies, in Section 65(b), that the *Alberta Labour Act* applies to boards, teachers, and other employees of a board. A Board of Industrial Relations controls labour relations. It also interprets certain legislation, which cannot be applied to teacher-school-board negotiations, in a flexible manner in order to meet the particular needs of trustees and teachers.

Negotiations begin at the local level, as in Ontario, between a committee of teachers and a committee of board members. Each local of the Alberta Teachers' Association, to which by law all teachers must belong, selects an Economic Policy Committee of five members which develops proposals, submits them for ratification to a general meeting of the teachers concerned, and forwards them via a negotiating sub-committee to the school board. Agreements must be referred by the teachers' negotiation committee to the local Economic Policy Committee for endorsation and then to the Alberta Teachers' Association for approval since it is the certified bargaining agent. This final step is apparently mere formality, however, and the Alberta Teachers' Association always ratifies the local agreements.

The majority of agreements are concluded at the local level. Either party, however, may turn negotiations over to its bargaining agent who is a headquarters' officer from either the Alberta Teachers' Association or the Alberta School Trustees' Association as the case may be.

If the provincial staff officers from each side are not able to effect a settlement, the negotiation process includes referral to a conciliation officer attached to the staff of the Minister of Labour, a conciliation board consisting of one appointee from each side and a mutually acceptable chairman, and a strike vote by secret ballot conducted by the Board of Industrial Relations at the request of the Alberta Teachers' Association. Although not provided for in the legislation, the parties often continue negotiations after rejection of a conciliation board's report. Alternately they may seek mediation by the Deputy Minister of Labour or by the Minister of Education, sometimes after a strike vote has been taken or during the course of a strike.

The *Alberta Labour Act* does not set time limits for the conclusion of the various stages of the negotiation process. The result has been that each year a number of agreements, not settled by June 30, have to be carried over the summer months for resumption of negotiations in the fall, and some negotiations have been protracted as long as three years.

An amendment to the School Act in 1970 gave school boards the right to combine in employer associations for the purpose of collective bargaining. As a result, the Alberta School Trustees' Association has been active in organizing school boards into regional groupings for negotiation purposes. There is no doubt that this trend accelerated hard-line attitudes in 1971. Only two of the eight regions formed by the trustees' group achieved settlements by the early autumn of 1971 and then only after more than fifteen months of negotiations. Trustees in five of the regions refused to consult with teachers about working conditions. The North Central West Region teachers voted to go on strike on October 8, and the Bow Valley teachers took strike action on November 29. In connection with the latter case, on December 13, the Alberta Minister of Education, on behalf of the Cabinet, announced that he would implement a regulation to withhold grants for teachers' salaries from school boards not paying salaries to teachers on strike. (The teachers involved, of course, drew strike pay of $16. or $24. per day from the Alberta Teachers' Association, but the school boards involved saved $15,000. per day in wages.) A spokesman for the Bow Valley School Authorities Association referred to the Minister's attitude as "an anti-trust stand", and a teacher spokesman at strike headquarters said that the Minister's statement was an encouragement to school trustees to settle "on the teachers' terms". Both strikes were settled, of course. The North Central West Region strike came to an end after both sides were convinced, during the continuing mediation process, to accept voluntary binding arbitration. But the Bow Valley strike ended only when, for the first time in Alberta's history, Section 106 of Part V of the Alberta Labour Act was evoked by the Lieutenant Governor-in-Council; under this section compulsory arbitration was ordered and the Minister of Labour appointed a single arbitrator to make an award.

The teacher-school-board negotiation process in the Province of Alberta, then, is an example of collective bargaining under labour legislation. The procedure runs the gamut from local bargaining, through provincial staff officer assistance, to conciliation, mediation, and strike action. There have been about eleven strikes, as far as the Committee of Inquiry can determine, over the years in the Province of Alberta. According to a table in J. D. Muir's Study No. 21 for the Task Force on Labour Relations, taken from the *A.T.A. Magazine* of January, 1966, if the school year 1963-64 is taken as a typical year, in 160 school jurisdictions salary agreement was reached at each of the following stages by the number of jurisdictions noted:

(1) Local Level – 86; (2) Provincial staff officer bargaining agents – 12; (3) Conciliation officer – 12; (4) Conciliation board – 2; (5) Strike – 1; (6) Post-conciliation board – 3; (7) No agreement – 44.

In the view of the Committee, collective bargaining on the model of labour relations legislation such as the Alberta Labour Act only serves to enhance hard-line attitudes, and creates conflict, rather than co-operation, in the school system.

The Province of British Columbia

The *Public Schools Act,* which is the single all-inclusive education act governing all aspects of education in the Province of British Columbia requiring legislation, legislates a bargaining procedure for teachers and school boards and definite time limits for completion of each step in the procedure. Teachers are specifically excluded from the *Labour Relations Act.*

Negotiations commence between the local association of the British Columbia Teachers' Federation and the school board or a committee of the latter or its designated bargaining agent. Either side may notify the other prior to September 20th that it wishes modification of the existing agreement.

If negotiations are not finalized at the local level, the sides may appoint a conciliator by mutual consent, but, if they have not reached agreement or have not appointed a conciliator by October 31, the Minister of Education appoints a conciliator; the conciliator does not have the power to make a written report or recommendations but may assist the sides in reaching an agreement. If conciliation fails, the issue must be referred to a Salary Arbitration Board by November 14th. This Board, composed of an appointee by each side and a chairman selected by the appointees, must report by December 31st a decision which is final and binding.

The provincial executive officers on both sides play active roles in the negotiation process. Staff officers of the British Columbia Teachers' Federation act in an advisory capacity to local teacher associations, and the Federation co-ordinates the activities of the various regions across the province by means of an 'Agreements Committee'. Staff officers of the British Columbia School Trustees' Association often assume the role of the bargaining agent on behalf of the local trustees. Staff officers of both sides are the bargaining agents for all cases that go to Salary Arbitration Boards.

The *Public Schools Act* limits negotiations to salaries and bonuses. It provides no authority for teachers to strike. In 1971, the British Columbia Teachers' Federation organized a province-wide one-day strike in support of the teachers' demands for a better pension plan. Subsequently, the British Columbia legislature amended the *Public Schools Act* to make membership in the British Columbia Teachers' Federation voluntary, rather than mandatory.

British Columbia, over past years, then, has been an example of a jurisdiction in which negotiations, beginning at the local level, may proceed through the steps of conciliation and compulsory arbitration. Over a period of five consecutive years, 27 percent of negotiations conducted in that space of time went the complete route to compulsory arbitration.

Recently, however, the Vancouver School Board, in conjunction with the British Columbia Teachers' Federation, developed a formula for the determination of salaries for teachers employed by the Vancouver Board. Both parties have agreed to adhere to the formula and the formula appears to be working successfully although it is only in its second year and at a very early stage in its development. The formula is reproduced as Exhibits B^1 and B^2 in Appendix C of this report. Of considerable interest to the Committee of Inquiry was the fact that the formula, if it had been implemented ten years ago, would have over the ten-year period given the teachers the same amount of remuneration that they have in fact received after considerable conflict and strife in the collective bargaining process. The Committee is heartened by this development, because it is an attempt to settle the question of salaries on a rational and statistical basis.

The Committee, however, is mindful of the fact that formulae are not magic, and statistical data are not always perfect. In 1971-1972, a new dimension entered the negotiation picture in British Columbia. Although both teacher and trustee sides were much encouraged by the fact that in 1970 only two cases reached the arbitration stage, in 1971 fifty cases, out of a total of seventy-three sets of negotiations, went the complete route to arbitration, apparently due to a statement by the Minister of Education, while negotiations were in progress and after a number had been completed, that no settlement was to exceed a 6.5 percent increase. Furthermore, a recent amendment to the Public Schools Act provides that the only way teachers will be able to get more than the government-established increase will be through a vote of the ratepayers in their school district. The Government of British Columbia has indicated that the terms of the amendment are to be retroactive in that any school board which goes beyond the 6.5 percent limit will have the excess charged against the district's operating expenses for the year and taken into account when calculating the following year's basic education program for the district,

and that the amount of allowable increase will vary from year to year and will be tied to the provincial government's raises to its own civil servants.

The result has been that, of the some fifty sets of negotiations which went to arbitration because of the 6.5 percent provincial limitation on increases, the average award of these arbitrations was a 7.6 percent increase. If the Provincial Government had not come out with its 6.5 percent limit and if the fifty teacher-school-board groups had settled on the basis of the Vancouver School Board formula, a practice which had been voluntarily adopted by most of them, the average increase would have amounted to only a 7.4 percent – 7.5 percent increase, a considerable savings on salary costs to the boards, not to mention the savings to the Provincial Government of the one quarter million dollars in arbitration costs. The Vancouver School Board honoured its agreement with its teachers and settled without an arbitration on the basis of its pre-arranged formula, giving its teachers an increase of 7.8 percent despite the provincial guideline.

British Columbia, therefore, exemplifies a jurisdiction in which binding arbitration and the establishment of a rational and factual basis for salary negotiations (exemplified by the Vancouver School Board formula) appear to be reducing the built-in conflicts in salary negotiations in other jurisdictions. The acceptance of factual data, whether by way of a formula or otherwise, throughout the province will further assist in establishing closer working relationships between teachers and trustees.

The Province of Quebec

Since relationships between teachers and school boards in the Province of Quebec, especially as regards negotiation procedures, have been both somewhat complex and also rapidly changing, the following account is based closely upon interviews with informed individuals in Quebec, upon J. D. Muir's clear and detailed description in his Study Paper No. 21 for the Task Force on Labour Relations, and upon the "Entente concluded between The Government of Quebec, The Quebec Federation of Catholic School Commissions, The Quebec Association of Protestants School Boards, on behalf of the school boards on the one hand, and The Quebec Teachers Corporation, The Provincial Association of Catholic Teachers, The Provincial Association of Protestant Teachers on behalf of the associations of teachers on the other hand".

Teachers in Quebec are subject to the Labour Code which grants them the right to organize, bargain and strike, and to the "Entente Provinciale" which was the result of negotiations provided for by Bill 25, passed by the Quebec Legislature on February 17, 1967. Bill 25 required that the three provincial teachers' associations form a committee of ten members (six from one association and two each from the other two associations) to negotiate on a provincial basis for all teachers in the province. This committee was to meet and negotiate with the "partie patronale", the employer side, which was to be composed of representatives of the two school board associations and of the Government of Quebec.

The two negotiating committees held initial meetings between July and October in 1967, and finally arrived at an agreement in November, 1969. Throughout this period, teachers consistently refused to accept the award of the Arbitration Board which had resulted from the imposition of compulsory arbitration on the feuding parties by Bill 25, school boards were equally reluctant to accept government domination, the entente (collective agreement) required by law was not executed by the parties, and, on July 14, 1967, Bill 25, which originally was to be in effect for one year, was extended by Order-in-Council. There were a number of rotating teacher strikes and attempts at mediation, and, on March 15, 1968, Bill 25 was extended again by another Order-in-Council.

The ultimate agreement, known as the "Entente Provinciale", establishes a province-wide salary scale, provides for the establishment of "Educational Policies Committees" composed of an equal number of representatives from the syndical units (local teacher associations) and the school board, and makes arrangements for grievance procedure, mediation, and arbitration. It should be noted also that the school board is obligated to consult with the "Educational Policies Committee" but not to accept its recommendations, that teachers have the right to strike and school boards to impose the lock-out, and further that it seems to be taken for granted that negotiable items consist of salaries, fringe benefits and conditions of employment.

Nevertheless, great difficulties were encountered in implementing the "Entente", with the result that Bill 25 was not allowed to expire until the 30th of June 1971. On that date, however, the Quebec Legislature passed Bill 46 which provided that no stipulation contained in a collective agreement between teachers and school boards taking effect on or after the 1st of July 1971 would be valid unless it had been approved at the Provincial level, and further provided that collective agreements should be deemed to contain every stipulation negotiated and approved at the Provincial level. Despite the fact that Bill 46 does not specify what is negotiable between teachers and school boards nor at what level negotiations shall be conducted, it is apparent that Bill 46 is an attempt by the Provincial Government to retain

centralized control over negotiations between teachers and school boards. Bill 46, however, did not purport to suspend the Labour Code as Bill 25 had done, and consequently, as mentioned above, teachers regained their right to strike under the Quebec Labour Code.

The history of teacher strikes in Quebec is significant. Prior to 1965, teachers in Quebec did not have the right to strike; but in addition to a few illegal strikes, there were a number of one, two or three day "study sessions", legal under the *School Act* which gave principals the right to convene special meetings of teachers. When the Labour Code was amended in 1965 to give teachers the right to strike, there were six strikes in 1966, and seven in 1967, including one by some 9,000 Roman Catholic teachers in Montreal which led to Bill 25 and the temporary removal of the teachers' right to strike. On February 16th, 1967, the day Bill 25 was passed, all teachers in the Province of Quebec, some 62,000 strong, went on a one-day strike in protest of the bill. Between 1960 and 1967, there were nineteen teacher strikes, some legal and some illegal, and nine "study sessions" in the Province of Quebec.

Quebec is an example of a jurisdiction in which the Government has played an active role in bargaining procedures and determination of agreements, and the right to strike has been frequently exercised. It is also an example of a jurisdiction in which province-wide negotiations have failed to produce a workable model for teacher-school-board relationships.

The State of California

Provision was made in the California Education Code by the Winton Act of 1965 for a "meet and confer" process between teachers and school boards. The statute requires the school board, on the request of the teachers, to "meet and confer". The school board, however, retains the authority which it has always had from the common law concept of sovereignty to make the final decision on any matters discussed, including salary.

The scope of the "meet and confer" discussions includes all matters relating to employment conditions and employer-employee relations and to procedures relating to the definition of education objectives, the determination of the content of courses and curricula, the selection of textbooks and other aspects of the instructional program.

Teachers are guaranteed the right to join or not to join employee organizations which may "represent their members in their employment relationships" with the local school board. Of 225,000 teachers in California, 175,000 belong to the California Teachers' Association and 12,000 belong to the California Federation of Teachers. Since there is more than one organization representing the teachers, a negotiating council composed of representatives of all teacher organizations, on a proportional-to-membership basis, is established in each bargaining unit.

Persistent disagreement is referred to a fact-finding committee of three members which reports to both parties, and may, with the prior written agreement of both parties, report recommendations at a public meeting. To exert pressure on the school board to settle, the California Teachers' Association frequently recommends to its members that they not accept positions with school districts where employment conditions are unsatisfactory to the association.

California follows the United States common law rule that, in the absence of express statutory authority, public employees, including teachers, are without legal authority to strike. It is noteworthy that, in 1970, teachers in the Los Angeles Unified School System engaged in an unlawful strike, and, when an agreement was entered into between the parties in an attempt to resolve the dispute, the agreement was declared invalid by the courts.

It seems to be apparent that the current problem in negotiations in California is the difficulty of defining "meet and confer" to the satisfaction of all parties. Many school boards are reluctant to "meet and confer" and do only what the law requires of them, to the point where the requirement of the Act has been referred to as "meet and defer".

The State of New York

The New York Civil Service Law, as amended by the Taylor Law which became effective on September 1st, 1967, provides for collective bargaining between teachers and school boards and for a written contract as the outcome of negotiations.

The bargaining unit for teachers is a unit of school district employees with a community of interest as determined by the school board. The scope of negotiations includes terms and conditions of employment, and grievance and impasse procedures; "terms and conditions of employment" has been interpreted to include every term and condition not specifically prohibited by other statutes.

The parties develop their own procedures which may include binding arbitration. If local negotiations fail to result in agreement, a mediator and then a fact-finding board may be appointed. The New York State Public Employment Relations Board assists at the mediator and fact-finding stages, and, if agreement is not reached at the latter stage, arranges a public hearing where the parties must substantiate their rejection of the fact-finding report. At this point the school board may make a final unilateral decision.

A summary of the stages at which settlements were effected in 1970 tells the State of New York story. Of some 2,000 contracts, sixty-three percent were negotiated directly between the parties without assistance. Of the 750 that went to the Public Employment Relations Board for assistance, 450 were settled at the first stage of mediation.

The remaining 300 progressed to the fact-finding stage, but some 70 of these were solved (with the fact-finder acting as a mediator) before a report was issued. Of the 230 cases in which a fact-finding report was issued, 100 were resolved at this stage. With the 130 cases that remained, a public hearing was held in 41 instances. Additional conciliation took place in the remaining situations, and no settlement was reached in 11 cases.

Although the strike is a prohibited sanction under the Taylor Law, there were three teacher strikes in 1970. Three different sets of penalties may be imposed against strikes; the most effective penalty is revocation of automatic deduction of union dues by the Public Employment Relations Board. In general, the State of New York seems to have the strongest laws to prevent illegal strikes. In actual fact, they have not prevented strikes, of course. But undoubtedly they have helped to limit strikes to only a few in number, and officials in the State of New York are confident that the strike weapon will not be used to any extent in the future.

England and Wales

A negotiating committee, named the 'Burnham Committee', negotiates a national salary scale for primary and secondary school teachers in England and Wales. The Remuneration of Teachers Act, 1965, provided for government representation and for ministerial determination of all the representatives on the committee, and also provided for a government veto power on the total cost of salary increases.

The 'Burnham Committee' is composed of two independent panels, one of employers and the other of teachers, under a neutral chairman appointed by the Secretary of State for Education and Science. The twenty-eight members of the employers' panel consist of two representatives of the Secretary of State for Education and Science and representatives of the various national associations of local authorities as selected by the Secretary of State for Education and Science. The twenty-eight members of the teachers' panel consist of representatives of the various unions as prescribed by the Secretary of State for Education and Science.

The composition of the Burnham Committee for Primary and Secondary Schools at present is as follows:

Chairman Alternate Chairman Management Panel		Appointed by the Secretary of State for Education and Science Teachers' Panel	
County Councils Association	8	National Union of Teachers	16
Association of Municipal Corporations	6	Association of Teachers in Technical Institutions	2
Association of Education Committees	6	Incorporated Association of Assistant Masters	2
Inner London Education Authority	3	Incorporated Association of Assistant Mistresses	2
Welsh Joint Education Committee	2	Incorporated Association of Headmasters	1
Minister of Education	2	Incorporated Association of Headmistresses	1
		National Association of Headmasters	1
		National Association of Schoolmasters	3
Joint Honorary Secretaries: Management	2*		
Teachers	1		

* One Joint Honorary Secretary is not a representative of any specific group on the Management Panel.

If both panels agree on a national scale, the Secretary of State for Education and Science issues an official order, under the Remuneration of Teachers Act, 1965, giving statutory force to the recommendations which are legally binding on all Local Education Authorities (Boards of Education). If the panels cannot agree, the Secretary of State for Education and Science selects three arbitrators – a teacher representative, a management representative, and an independent chairman. Their decision is binding on the Secretary of State for Education and Science who must make an order putting the arbitrators' award into effect unless the Secretary of State, feeling that the award would be detrimental to the nation's economy, is able to negate it by obtaining an affirmative vote in both Houses of Parliament.

Representatives on both panels in "Burnham" have pointed out weaknesses in the present negotiating procedure. The National Union of Teachers, consisting of approximately 250,000 out of 350,000 teachers in England and Wales, has the majority voice on the teachers' panel, but, since it is composed mainly of primary school female teachers, it is not considered to be truly representative of teachers as a whole; herein seeds of disunity on the teachers' panel are sown. Furthermore, the size of the "Burnham Committee" leads to long hours of debate, often by people who have

not ensured that they are fully informed, and hence results in protracted negotiations. For these reasons, many experienced participants in the process, or observers of it, feel that more and more, the accepted pattern in negotiations will be marking time in "Burnham" until arbitration is requested.

England and Wales, in the Committee's view, is an example of a jurisdiction in which the Government has virtually controlled the teacher-local-authority negotiation process, and in which negotiations on a national scale have failed to engender complete satisfaction for either the employer or the employee side in the protracted process.

References (See Bibliography)

1. Muir: *Collective Bargaining by Canadian Public School Teachers;* pages 160-173, 193-200.
2. Canadian Teachers' Federation: *A Comparative Study;* page 8, 23-24, 29.
3. Entente etc.: pages 1-20.
4. Compact, February 1971: pages 18-21.
5. Committee on Executive Management and Fiscal Affairs National Governors' Conference: *1970 Supplement to Report of Task Force on State and Local Government Labour Relations.*
6. *Scales of Teachers in Primary and Secondary Schools, England and Wales 1971:* page v.

Chapter 5

Some Aspects of the Private Sector and Their Impact upon Teacher-School-Board Relationships

I The Devolution of the Canadian Collective Bargaining System

In the past decade or so, a form of joint salary negoitiations has evolved between local teachers and local trustees. The form of these joint negotiations, probably in the absence of any other model, has tended to simulate collective bargaining as perceived to be carried on in the private sector.

Paradoxically, this mimicry has been taking place at the very time, certainly in the latter stages, when the efficacy of the Canadian collective bargaining system was being overtly questioned by many persons concerned with the country's wealth producing capabilities.

The Report of the Task Force on Labour Relations (Woods Report) spoke of "a crisis of confidence in the present industrial relations system". It referred to the "rash of strikes" (Canada's pre-report strike record has been surpassed mightily since) and, importantly, it noted that "the protagonists seem to suffer less than the public" and "are using the public as their whipping boy".

Industrialists, the most informed of all groups on the real effects of the collective bargaining system, describe it as a "sick institution", if not actually "dying", badly in need of "intensive care". Nor is empirical evidence to support these comments lacking. Recently, two strikes alone, one at International Nickel and the other at the Steel Company of Canada, cost the Ontario economy half a billion dollars in lost production.

Since the introduction of the present collective bargaining system and procedures, industrial conflict in Canada has multiplied many times. Doubtless there are several reasons for this unwanted growth, but the basic phenomenon persists; under a system designed solely to reduce conflict, the opposite ensues. Canada has gained and has held for several years the highest strike record, in percentage of time lost, of any nation.

Nothing in this record recommends existing collective bargaining practices and procedures as a model for teacher-trustee negotiations in Ontario, or elsewhere!

But before considering alternatives, it would be useful to examine, briefly, the original theory behind our collective bargaining system. If we view the misapplication of the theory, if we distinguish clearly that which has evolved in its stead, then we may be better able to avoid repeating old errors, both legislative and attitudinal.

The purpose of collective bargaining laws and procedures was, as mentioned, to reduce, and hopefully even to avoid, overt employer-employee conflict. Collective bargaining was designed to foster a more harmonious relationship in our industrial plants and communities. If employees, through their chosen leaders, were brought together with management, if labour and management were required to sit together at the bargaining table and discuss their affairs, then, the legislators believed, employees and their management would find an obvious mutuality of interest in the enterprise, and any differences would dissolve in the ensuing discussion and agreement. The original purpose of collective bargaining, and of labour legislation which fostered it, was to create a procedure whereby employees, represented by freely chosen representatives, might expeditiously find a means of resolving any differences with their employer with a minimum of rancour.

If, however, employees couldn't arrive at an acceptable agreement with their employer through negotiations at the bargaining table, then the system would permit the employees to engage in a strike — a refusal, in concert, to perform assigned tasks.

Strikes were countenanced by the legislation — and this point is most vital to an understanding of where and why the system broke down — strikes were countenanced by the legislation *to test the employer's offer in the market place.*

If the employees, or others in the labour market, continued to refuse to work for the terms offered, the employer, the legislative theorists held, would soon increase his offer or go out of business. And in a free labour market, it was held, one should pay the going rate or close down.

This carefully rationalized economic theory of the workings of the "legally authorized" strike disintegrated in short order once the collective bargaining legislation became law. What has emerged in its place is the now widely believed fallacy that inherent in the so-called "right" to strike is some form of collateral right to forbid anyone from working in the establishment, to close down the enterprise, using, if needed, all the forces of intimidation, violence and material destruction. Nor are these coercive tactics reserved for potential new employees who may deem the employer's offer equitable; more often than not the threats and intimidation have been directed at employees and their families — fellow union members — who wish to accept the offer.

Thus the right to strike became a right to seize and close the business!

Unbalanced and unfair as the private sector collective bargaining system was even to union members, transplanted into the federal public sector it soon wrought widespread inconvenience and even havoc. Successively, the public was denied, at the will of small, self-seeking groups of public servants, one vital service after another.

Good faith negotiations, the cornerstone of the collective bargaining theory, gave way to unbridled power. Power, apparently countenanced by the state, must, it seems, be used to the utmost to test its effectiveness. The ability to hold the public or an employer at ransom, for however long, has become the accepted means of determining "equitable" job values! In the slogan of an earlier era, "Might becomes Right".

Damaging as this historical record appears, nothing that has devolved should be allowed to detract from the original concepts and purposes of collective bargaining and group dealings by organized employees. Let us not, to use an over-worked analogy, throw out the baby with the bath water. On the contrary, the hope of saving collective bargaining lies in the recognition of the "sickness" and the reason for it in the present system.

This is a prime purpose of this Inquiry and of this Report. Perchance an effective, satisfying and satisfactory joint negotiation scheme in Ontario schools may suggest a model elsewhere, where it is so badly needed.

II A Strategy for the Establishment of Effective Joint Salary Negotiations in Ontario Schools

A *First Principle* should be proclaimed.

"It is an irrefutable policy of the people and the government of the Province of Ontario that the teachers and the staff employed in the elementary and secondary schools of the Province will be compensated for their services at a salary and benefit level equivalent to the salaries and benefits paid for occupations of equivalent skill in the wealth-producing sector of the Province, with due regard to any regional differentials which may exist from time to time".

It is intended that this statement of principle be accepted by the Legislature and promulgated by the Minister.

The weight of evidence in the hearings conducted by this Committee of Inquiry points to a forthright acceptance by the trustees in the Province, by the teachers, and by the public of this "compensation standard" as being a fair and proper one.

Discord, between trustees and teachers, where such has existed, seems to the Committee, to be a reflection of the absence of a rational salary policy. Not only did this appear to be true in Ontario but also in the other provinces and jurisdictions visited. Without any exceptions worthy of note, teachers were seeking assurance that their remuneration would not be allowed to fall behind other comparable occupations; their search was for their "fair share" of the economic wealth, and the principle above, properly administered, would ensure this.

A *Second Principle* of joint negotiations should also be enshrined in public policy.

"When the teachers employed by any school board decide, by majority secret ballot vote, to negotiate on compensation as a group with their trustees, the trustees will then be obliged, by statute, to meet and negotiate with the teachers' chosen representatives and all the teachers will be bound by the outcome of the joint negotiations".

Nothing in this policy would prevent the elementary and secondary teachers negotiating together or in separate groups, as they might choose. Nor would the school principals be prohibited from forming a negotiating unit of their own if they choose to do so.

A *Third Principle* should be enunciated.
"Negotiation concepts between teachers and trustees would have their basis on facts, impartial fact finding, and, in the absence of forthright agreement, final adjudication by a permanent, impartial adjudicator".

An understanding of the meaning and significance of joint negotiations is vital to the working of this concept. Here the history leading to the loss of confidence in the present collective bargaining system, outlined earlier, is useful.

Joint negotiations does not mean, or imply, joint determination. Differences between demand and offer, differences in viewpoint, or differences in responsibilities are not to be resolved by a majority vote of the participants in joint negotiations. The trustees are elected and burdened with responsibility for the management and operation of the schools. They cannot abrogate or avoid their accountability to the public. The teachers remain the petitioners in joint negotiation proceedings and the trustees remain accountable for saying "yes" or "no", in keeping with what they judge to be the wishes of those who hold them accountable for the good and proper running of the schools.

But, it is not that simple, and there are important safeguards, for everyone, in the joint negotiation system proposed in this Report:

a) The trustees and teachers are bound by the terms of the *First Principle;*

b) The Professional Research Bureau, recommended elsewhere in this Report, would provide essential "facts" as a basis for the joint implementation of this policy; and

c) An Adjudicator will be available for final determination of the facts and of appropriate salary and benefit levels in the event either the trustees or the teachers prove to be intransigent in any instance.

The decision of the Adjudicator would be final, subject only to the sovereign authority of the legislature to vote, or not to vote, the funds necessary to implement any agreement or award.

One or two procedural matters remain for discussion:

1) No time limits need be placed on salary negotiations either at the local or adjudication level. With final adjudication available to either party at will, time limits are not only unnecessary but could hamper settlement. If negotiations are prolonged beyond the expiry date of a former agreement, to the detriment of either the teachers' or the trustees' position, nothing in law or practice should prevent a retroactive salary adjustment, in whole or in part. What should be ensured, in every event, is a minimum period of stability following each set of negotiations. This can be provided by stipulating that every agreement entered into will remain in effect for a minimum period of one year from the date of signing. Needless to say the terms contained in the agreement should reflect the conditions prevailing at the date of signing.*

A beneficial side effect likely to flow from this procedure over the years will be the avoidance of a province-wide crisis. Instead of all agreements coming up at the same time and possibly flooding the impasse procedures, negotiations would tend to occur at different times throughout the school year.

2) Conciliation and mediation procedures have become commonplace — almost a ritual — in collective bargaining. Indeed a form of "joint conciliation" has developed, and proven useful, in the Ontario school negotiation system. Are conciliation or mediation procedures appropriate or desirable under the joint negotiation scheme now proposed?

The answer would appear to the Committee to be a qualified "no". The outcome of the proposed joint negotiations is not to be, as elsewhere, a mere accommodation of the positions of the two parties. The outcome, as proposed, is to be founded on the facts at the time — facts firmly based on credible data related to the *First Principle.* It could, in the opinion of the Committee, be damaging to this process to have a third party intervene prematurely — a third party whose sole object would be to effect a settlement. The pulling and tugging — the essence of conciliation and mediation — the pulling and tugging at the parties' positions (and at the facts!) seem most inappropriate. In the event of an impasse earlier, third party suggestions or opinions, or worse still the "conciliatory" position he may have brought the parties to, could compromise the adjudicator's ability at a later stage to make a sound decision on the merits.**

The Committee qualified its "no" because it did not believe, regardless of the above, that it would be proper to preclude the parties from seeking and using outside assistance if they, jointly, choose to do so. The Committee holds, however, that any such assistance, below the adjudicator level, should be unofficial and off the record.

*Mr. Onyschuk's Minority Report on this point may be found at page 61.

**Mr. Onyschuk does not agree in full with this comment, and his comments may be found on page 63.

Chapter 6

Teachers and the Right to Strike

I Legal Aspects

In any consideration of the sanction of the strike, it was incumbent upon the Committee of Inquiry to determine whether a strike at common law is a legal activity, and whether it is therefore available to teachers as a group, under what conditions and with what restrictions.

It is, of course, evident that the Labour Relations Act does not apply to teachers by its own express terms, and therefore it does not operate as a restraint on any right to strike. If a strike of teachers at common law is a legal activity, then the only restrictions upon it must be found in applicable general legislation, in the Criminal Code provisions relating to conspiracies and restraint of trade, and in the contractural relationship between the teacher and his school board; and it is these matters which the Committee considered secondly.

As early as 1891, Lord Bramwell in the House of Lords decision in the *Mogul Steamship Company* case stated:

"There is one thing that is to be decisive. I have always said that a combination of workmen, an agreement among them to cease work except for higher wages, and a strike in consequence, was lawful at common law; perhaps not enforceable inter se but not indictable."[1]

The law as to the right to strike, however, was firmly established in the famous trilogy of *Allen* vs. *Flood* (1898) A.C. 1; *Quinn* vs. *Leathem* (1901) A.C. 495, and *Sorrell* vs. *Smith* (1925) A.C. 700. These cases established that a strike is not illegal at common law provided that it is waged or threatened in furtherance of a legitimate economic interest of the person striking, and provided that no tort (such as procured breach of contract, assault, defamation, etc.) and no criminal act is committed by the person striking and provided that the strike is not for the sole purpose of injuring the employer in his business undertaking. *Sorrell* vs. *Smith* and *Quinn* vs. *Leathem* established the delicate balance between the employees' right to strike for the purpose of "forwarding or defending their own trade", and the principle that strikes must not be for the purpose of injuring the employer in his trade or business undertaking. If the strike was in furtherance of a legitimate trade purpose, such as higher wages or better working conditions, then it was legal although it would result in injury to the employer in his business undertaking. But if the strike were waged for no such legitimate object, but solely in pursuit of a malicious purpose to injure the employer, or if it were waged in such a way that civil or criminal wrongs were committed, it was illegal.

Allen vs. *Flood* established the principle that:

"It would have been perfectly lawful for all the iron workers to leave their employment and not to accept a subsequent engagement to work in the company of the Plaintiffs. At all events, I cannot doubt that this would have been so. I cannot doubt either that the Appellant or the authorities of the union would equally have acted within his or their rights if he or they had 'called the men out'. They were members of the union . . . It is not for your Lordships to express an opinion on the policy of trade unions, membership of which may undoubtedly influence the action of those who have joined them. They are now recognized by law; there are combinations of employers as well as of employed. The members of these unions, of whichever class they are composed, act in the interests of their class. If they resort to unlawful acts they may be indicted or sued. If they do not resort to unlawful acts they are entitled to further their interests in the manner which seems to them best, and most likely to be effectual."[2]

The House of Lords decision in *Allen* vs. *Flood* was transferred and embodied into Canadian Law first in *Perreault* vs. *Gauthier*,[3] where workmen, in carrying out the regulations of a trade union forbidding them to work at a trade in company with non-union workmen, without threats, violence, intimidation or other illegal means refused to work with a non-union workman and walked off their jobs. It was held by the Supreme Court of Canada that the strike was a legal strike and that no actionable wrong had been committed. By 1908, the notion that strikes were per se illegal was rejected and in a case where the Trial Judge had directed the jury that "the calling out of the men on strike by resolutions of the union was an actionable wrong, without regard to motive" the Privy Council ruled that the statement was an error in law and that a misdirection had been committed.[4]

None the less, strikes over the years have been found to be illegal or actionable with a persistent constancy. The usual grounds of liability has been (1) conspiracy to injure the employer in his business, and (2) inducing breach of contract. This latter subject has been canvassed in an article by a learned student of labour law,[5] where the author states:

"This much, at least, appears from the dicta in the cases: Absent a nominate tort (e.g. assault, procuring breach, defamation), absent a criminal act, absent an intention to injure, strikes might lawfully be waged or threatened in furtherance of some legitimate economic interest. Those interests sometimes considered legitimate included higher wages, a union shop, the non-employment of persons with whom the union did not wish to work, and assistance to fellow unionists engaged in some legitimate dispute. Political strikes were beyond the pale, as were gratuitous demonstrations of force, or strikes calculated to injure an employer in the carrying on of his business by interfering with his employees or customers, or jurisdictional strikes."

The above quotation from the article accurately states the common law, absent legislation.

The Criminal Code in Section 424 and 425 (R.S.C. 1970, ch. 34) has not changed the common law, and recognizes the right of workmen to strike for legitimate purposes. If unlawful means are used, however, criminal law sanctions are prescribed.

Against this background, one must consider the individual teacher's contract with the school board and its effect upon the right of the teacher to strike.

The individual teacher's contract is prescribed by Regulation 208 under the Department of Education Act, Revised Regulations of Ontario 1970. Furthermore, by Section 16. (1) of the Schools Administration Act each contract of employment between a board and a teacher is deemed to include the terms and conditions contained in the form of contract prescribed under Regulation 208 and in the event that there is no written contract, Section 16. (1) deems that every agreement, including presumably an oral one, includes the terms and conditions as set out in the forms.

The individual teacher's contract is an agreement which does not have a termination date in it. It states that the Board agrees to employ the teacher commencing with a date written into the contract at a mutually agreed yearly salary (which yearly salary is subject to such changes as may be mutually agreed upon between the parties). By Section 8. of the Permanent Teacher's Contract (Section 7a of former printing) prescribed by Regulation 208, the agreement remains in force until terminated in accordance with any Act administered by the Minister of Education or the regulations thereunder. Regulation 208, Section 6., states that an individual teacher's agreement may be terminated by either party on the 31st day of December in any year provided written notice is given on or before the 30th day of November, or on the 31st day of August in any year provided that written notice is given on or before the 31st day of May of that year. The same provisions are also written into the individual teacher's agreement, and are found in Section 6 thereof. The agreement may also be terminated at any time by the mutual consent of the parties.

It is abundantly clear from the above that any strike, or withdrawal of services, during the term of the teacher's contract would be a fundamental breach of contract, and specifically a breach of Article 3 of the contract which states:

"The teacher agrees to be diligent and faithful in his duties during the period of his employment, and to perform such duties and teach such subjects as the board may assign under the Act and regulations administered by the Minister."

On the basis of Quinn vs. Leathem, therefore, any strike during the time the agreement is in force would be illegal.

However, the fact that the individual teacher's contract can be terminated on the two dates specified in the contract – that is the 31st day of December and the 31st day of August of any year – gives each teacher the right to cancel or withdraw his services on the dates specified. Since this right is a legal right, it affords the opportunity to a group of teachers, or indeed a whole school staff to give notice of termination of their contract in a mass resignation and thereafter to terminate their contract, and in effect to "strike". Such a "strike" would not be a breach of contract, and furthermore anyone counselling teachers to "strike" would not be inducing a breach of contract: *Allen* vs. *Flood* and *Sorrell* vs. *Smith* established the proposition that a person has not a cause of action because of having suffered damages where the party causing the damage, without using unlawful means, induces others not to enter into or continue a contract with such person. If such a mass resignation, or "strike", were waged with the intent of "furthering the trade interests" of teachers, and if no civil or criminal tort were committed, then a strike could legally be taken on the two dates specified in the individual teacher's contract – that is on the 31st day of December or August of any year.

It is now incumbent upon the Committee to consider whether the right to strike is compatible with the role of the teacher as a professional and as an employee in a very important public service.

References

1. *Mogul Steamship Company vs. McGregor* (1892) A.C. 25, page 47.

2. Lord Herchell (1898) A.C. 1, page 129.

3. *Perreault* vs. *Gauthier* (1898) S.C.R., page 241.

4. *Jose* vs. *Metallic Roofing* (1908) A.C. 514.

5. Professor H.W. Arthurs, Volume 38 of the Canadian Bar Review, 1960, page 346.

II Philosophical Aspects

In any discussion of whether elementary and secondary school teachers in Ontario should be given the right to strike in lieu of, or in addition to, other methods of resolving impasses in their professional negotiations with their employers, the School Boards, one must take into consideration the dual status which teachers enjoy as professionals and as public employees.

In Chapter 1 of this Report, the Committee of Inquiry has advanced its opinion that teaching is a profession, meeting as it does all the recognized criteria of professionalism, and consequently its adherents, the teachers, are professionals in every sense of the term. The question then arises whether

teachers can engage in a concerted withdrawal of their services either complete or partial, as in the case of the so-called "work to rule", without, at one and the same time, renouncing their indisputable claim to be professionals and destroying the credibility of their profession in the eyes of the public.

Since the paramount feature of professionalism is an over-riding duty of those claiming the status to exercise their special skills and talents in the interests of the public, it is difficult to reconcile this duty with a voluntary mass action which constitutes a total abnegation of that duty. As a distinguished legal counsel, Mr. G. D. Finlayson, Q.C., has said, "Those who call themselves professionals and yet advocate the strike as a legitimate weapon are persons who merely wear the badge of a professional without exercising the calling."[1] Put another way, if one accepts as valid the definition of a profession advanced by Peter Wright, Q.C. (now The Honourable Mr. Justice Wright, Supreme Court of Ontario) namely, "a self-selected, self-disciplined group of individuals who hold themselves out to the public as possessing skill derived from education and training and who are prepared to exercise that skill, primarily in the interests of others",[2] then the concerted refusal of members of that profession to exercise their special skill in the interests of others would seem to constitute a renunciation of their profession and their professionalism. Indeed, the recent strikes by doctors in Saskatchewan and Quebec were so regarded by a large segment of the general public and a significant representation of the public press, and have done much to embroil that hitherto sacrosanct profession in acidulous and acrimonious controversy.

While it is true that the definition of The Honourable Mr. Justice Wright and the remarks of Mr. Finlayson have particular relevance to self-employed professionals, the Committee of Inquiry feels that they are also applicable to employed professionals, be they doctors, lawyers, nurses or teachers, who by the nature of their calling and employment owe not only a duty to their employer but also a duty to the public at large.

It is only fair to state that this view is not universally held in that some knowledgeable authorities state that it is not unprofessional for members of a profession to engage in a strike. Thus, Shirley B. Goldenberg, M.A., gave a qualified answer to the question when she wrote:

"While some professionals would undoubtedly renounce the strike weapon as 'unprofessional' under any circumstances, others maintain that the right to strike must be kept as a bargaining weapon. I believe this decision should be left to the professional workers concerned in all but exceptional circumstances. Unless the withdrawal of professional services would jeopardize a vital public interest, I feel that no legal restriction on the right to strike is indicated."[3]
(Emphasis added by Mrs. Goldenberg)

A fellow contributor to the Task Force on Labour Relations, J. Douglas Muir, M.B.A., was less inhibited, in his study of professional negotiations by Canadian public school teachers, when he stated:

"In examining the consequence of various types of sanctions, there is evidence to suggest that the strike (by teachers) is 'cleaner', more effective and less disruptive than either the coincidental resignation or the in dispute designation. A strike brings the dispute to the surface and clears the air with few long-run effects".[4]

Despite these views, which are entitled to careful consideration and respect, the Committee of Inquiry is of the opinion that the right to strike is incompatible with professionalism generally and with the professional status of the teacher in particular.

Turning now to our second approach to the problem under consideration, there can be no doubt that teachers are public employees — not that they are civil servants, but that they perform a vital public service, the education of the young in this Province, a service in which all the citizens of the Province have a vested interest, and on the faithful, efficient and dedicated performance of which the future of this Province depends. Teachers, as employees of democratically-elected school boards charged with the heavy responsibility of educating the young, therefore acquire the status and responsibilities of public employees.

It would consequently seem to follow that a strike by teachers would be contrary to the public interest in that such a concerted withdrawal of services would not only deprive the public of an essential public service, but also would constitute an attempt by the teachers to impose their will on their employers who are elected by the public to carry out its will in the field of educational policy. In effect, therefore, a strike by the teachers is an attempt by them to impose their will on the community which they serve.

Again, it is only fair to state that this view is not universally held. In 1967, the Government of Canada, by the passage of its Public Service Staff Relations Act,[5] gave its employees the right to strike for the first time, and certain groups of Federal employees thereupon opted for this method of determining their disputes with their employer. As early as December 1968, the Task Force on Labour Relations, commenting on the operation and effect of the new Act, had this to say:

"700. It is less than two years since The Public Service Staff Relations Act was enacted and a new course charted for labour-management relations in the Federal Public Service. Limited experience under the new framework supports some initial impressions.

701. There has been only one strike under the new system and, although it was disruptive and costly, we do not believe it justified any profound change in the present law.

702. We recognize that there are those who had reservations about giving public servants the right to strike even before they acquired it. We also appreciate that others now share that misgiving as a result of its early use. However, we do not think that such a right, once given, should be taken away without more cause than has thus far been adduced. We are mindful of the corrosive effects of compulsory arbitration, which will be the only reasonable alternative should the right of Federal Public Servants to strike be abrogated."[6]

Since the "Woods" Task Force reported, there have been further damaging strikes in the Public Service in Canada and the whole process of collective bargaining in the Federal Public Service is under review. It is interesting and germane to note that, in 1971, teachers in the public service of Canada who had originally opted for compulsory arbitration as the ultimate method of resolving their disputes with their employer have changed their election and opted for the right to strike.

In the Provincial field, certain of the provinces of Canada, for example Saskatchewan and Quebec, have also accorded their public servants the right to strike. In Ontario, this right has been denied the public service. In his report to the Ontario Government as Special Adviser, His Honour, Judge Walter Little has this to say:

"It is a truism in our democratic society that where the interests of an individual or group are in conflict with the overall interests of the community, the interests of the community must prevail. It is axiomatic that if society is to be preserved, the sovereignty of the state must remain supreme. Surely our history traces our development to an acceptance of this principle. Furthermore, our democratic processes provide the methods by which the interests of the community are to be safeguarded. We choose by free election those who will be entrusted with that responsibility and we have the opportunity at regular intervals of either reaffirming that trust or transferring it to others. Implicit in the selection of those who will govern us is the duty of those selected to provide, without interruption, those services to which all citizens are entitled by law to avail themselves. Therefore, despite my opposition to the imposition of compulsory arbitration to settle industrial disputes in the private sector, I cannot accept the proposition that anyone who joins the public service should have the right, in conjunction with others, to withdraw his services with the sole objective of compelling a duly elected government to meet their demands, no matter how meritorious they may be. To admit such a proposition is to imply that our processes of government, and the services which are provided by law for the benefit of all citizens when required, can legally be rendered ineffectual if a critical segment of public servants or Crown employees should engage in strike action. The result of such enforced repudiation of its obligation to the community by the government could be, as stated by the late The Honourable Mr. Rand, 'the harbinger of social disintegration'.

This is not my conception of how our democratic processes should work. Governments are elected to formulate policies and make decisions for the benefit of the whole community. No individuals in the community, particularly those who are employed to ensure, and are actively engaged in, the effective implementation of such policies and decisions, should be able by concerted action to impede or frustrate such implementation, in order to enforce their will on the citizens as a whole".[7]

Perhaps the most forthright and uncompromising view of the incompatability of the right to strike with public employment is that of the late The Honourable Ivan C. Rand who, in his Royal Commission Report on Labour Disputes, had this to say:

"The phenomenon of public service that is becoming clearer each day is the commitment of vital public functions to a rapidly increasing number of small minorities and the equally rapid expansion of community dependence on their faithful performance. When individuals or groups voluntarily undertake these responsibilities, they enter a field of virtual monopoly; the community cannot secure itself against rejection of those responsibilities by maintaining a standby force which itself would be open to a similar freedom of action. Our society is built within a structure of inter-woven trust, credit and obligation; good faith and reliability are essential to its mode of living and when these obligations are repudiated, confusion may be the harbinger of social disintegration . . .

Claims of the class under consideration, in the context of our democracy, although of importance to the individual, have an impact on the public interest out of all proportion to that importance; and their consequences to increasingly larger segments of the community soon become intolerable. It is the community that recognizes the social necessity of reconciling total interests, including that of the individual, and it is that recognition which is distorted at times by arrogant individual or group dictation. Ultimately it is going to be the community, through its supreme authority, the legislature, which will determine the limits, . . . A strike in the public service is directed against the public and it is obviously open to the actions of that public to withhold its benefits from or its protection of the violator. The public contribution to pensions, unemployment insurance, health and welfare services, education and other reliefs and assistances, is too great today to justify serious charges of the betrayal of any group. There is no justification in the field of public employment for a refusal of settlement of disputes in a manner similar to the innumerable conflicts, many of them of far greater individual concern than the economic claims of public employees, which are being decided every day in our Courts and in other tribunals".[8]

It should be noted at this point that strikes by public employees are universally prohibited by law in the United States of America, both at the federal and state level. The rationale for such action is perhaps best stated by the late President Franklin D. Roosevelt, quoted in the Rand Report as follows:

"The strike of public employees manifests nothing less than an attempt to prevent or obstruct the operation of government until their demands are satisfied. Such action looking towards the paralysis of government by those who have sworn to support it is unthinkable and intolerable".9

Dealing now specifically with teachers as public employees, it has earlier been related that federally employed teachers have been given the right to strike and have lately opted to exercise this right, though as yet they have not done so. Certain of the provinces, namely Alberta, Saskatchewan, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, have either explicitly or implicitly recognized the right of teachers to engage in a legal strike. This recognition is qualified, however, in Saskatchewan by a 1971 amendment to that province's Teachers' Salary Agreement Act of 1968 permitting the Minister of Education to impose binding arbitration when he deems it necessary and advisable, and in Quebec by Bill 25 until its expiration on the 30th of June, 1971. Teachers do not have the right to strike in British Columbia and Manitoba – by express prohibition in Manitoba, by implied prohibition through the imposition of compulsory and binding arbitration in British Columbia. In the first section of this Chapter the Committee of Inquiry has analysed the laws of Ontario and has expressed its opinion that teachers in this province do not have the legal right to strike, except on the two termination dates set out in the teacher's individual contract.

In the light of the wide divergence of legislative enactments in Canada concerning this matter, it is not surprising that there is an equally wide divergence of opinion expressed by Ontario teachers concerning the desirability of being given the right to strike. This divergence of opinion is manifest in many of the briefs received by the Committee of Inquiry from teachers' associations. In the submissions of teachers at a number of the public hearings conducted by the Committee, it was evident that teachers have an ambivalent attitude towards being given the right to strike and towards exercising that right if it is granted. On the one hand, many teachers fear that exercising the strike weapon will destroy their professional status; on the other hand, many teachers feel that the refusal of that right will result in them having no effective means to enforce their just demands and to satisfy justifiable professional ambitions. While some teacher organizations were quite uncompromisingly militant and insisted that they be given the right to strike, others were equally uncompromising in their opposition to the strike as a professionally effective means of settling their impasses with their employers, while still others favoured the strike solution only as a last resort when all else failed.

While comparisons are invidious and generalizations dangerous, it is safe to say that there is no overwhelming demand for the right to strike by Ontario teachers, providing other acceptable methods are devised for settling teacher-trustee impasses.

Incidentally, it is of more than passing interest that in none of the states in the United States of America do teachers have the right to strike, except in Hawaii and Connecticut where limited strike privileges have been granted to teachers.

Again in this area of the Committee's inquiry, the most forthright and uncompromising opinion of the incompatibility of the right to strike with the teacher status as a public employee is that of the late The Honourable Mr. Rand where he states in his Royal Commission Report as follows:

"In public employment strikes, as, for example, school teaching, the object is directly to coerce concessions from the public through taxation by the deliberate throwing into disorder of an essential public function; denying the children the training that is vital to the cultural standards of our civilization. That school teachers should be remunerated suitably to their function is not questioned, but that any such group should be permitted, but such means, to compel the public to submit to arbitrary demands is repugnant to democratic government.

In this province, through taxation, over one and three-quarters billion dollars a year is being spent on education to sustain and improve social conditions generally; the primary and secondary grades of teaching have been committed to a group constituting an insignificant minority, numerically, of its population, but a group occupying de facto a monopoly position over that vital function. The basic freedom of teachers, as of all workers, is to withdraw from the particular service if the terms are unacceptable; the substance of a strike in any employment is the insistence on retention of membership in it and at the same time the demand that terms be met. Their qualifications have been achieved largely through training provided by the public; and that they should refuse to accept the verdict of an impartial and competent body of arbitrators is difficult to reconcile with responsibility; the example it sets to the whole community of children does not tend to the advancement of that respect in which teachers must be held by their pupils if instruction is to be effective. It is conceivable that a fair request may be rejected; but the avenues open for appeal are too many and the ultimate acceptance too certain to justify the disruption of such a social necessity by such means."10

The Committee of Inquiry agrees with both the sentiments expressed by His Honour Judge Little and by the late Honourable Ivan C. Rand, and is therefore of the opinion that the right to strike is incompatible with the status of the teacher as a public employee.

To recapitulate, the Committee of Inquiry is of the opinion that the right to strike is inconsistent with the dual status of the teacher as a professional and as a public employee and therefore will not recommend that the right to strike be given to elementary and secondary school teachers in Ontario. This stand, of course, is subject to the proviso that a viable alternative to the right to strike be provided to resolve interest disputes between teachers and their employers, and the Committee proposes in this Report to suggest a viable alternative which it hopes will meet the just aspirations of teachers, the responsibilities of democratically elected school boards, and at the same time the basic interests of the public in a vital and essential public service.

References (See Bibliography)

1. Finlayson: *Collective Bargaining and the Professional Employee;* page 118.
2. Wright: *29 Canadian Bar Review;* page 748.
3. Goldenberg: *Professional Workers and Collective Bargaining;* page 98.
4. Muir: *Collective Bargaining by Canadian Public School Teachers,* page 234.
5. R.S.C. 1970, Ch. P-35, Section 36-38 incl.
6. Woods: *Canadian Industrial Relations;* page 199.
7. Little: *Collective Bargaining in the Ontario Government Service;* page 42.
8. Rand: *Report of the Royal Commission Inquiry Into Labour Disputes;* pages 111-114.
9. Op Cit., page 115.
10. Op Cit., pages 112-113.

Chapter 7

The Philosophy of Impartial Adjudication

Compulsory Arbitration is synonymous with Adjudication, which latter term the Committee prefers in the context of teacher-trustee relationships, reflecting as it does the professionalism of teachers and their responsibilities as public servants charged with the duty of educating the young, as well as the responsibility of the trustees elected by the people to assure that their children are properly educated.

Impartial Adjudication is a process whereby irreconcilable disputes are submitted to a disinterested and impartial third party for final and binding determination. The principles behind Impartial Adjudication are the same as those behind the jurisprudential system of the Courts of the land, namely that fairness, equity and justice shall prevail over force; that citizens should not take the Law into their own hands to achieve their own ends; that "right" not "might" should be the governing determinant in the affairs of men. Impartial Adjudication, like the judicial process, is not concerned with a compromised or accommodative settlement of disputes, but with a fair and just solution of those disputes according to the very right and justice of the case. In this respect, it differs fundamentally from conciliation and mediation, which are designed to effect an accommodation between the disputing parties and to achieve a settlement by way of compromise, trade-offs, and concessions. Impartial Adjudication proceeds on substance and principle; conciliation and mediation, on expediency and advantageousness. Elements of abstract justice therefore enter into the process of Impartial Adjudication, whereas they seldom do so in the process of conciliation and mediation. Finally, Impartial Adjudication provides a final and binding solution to the disputes before it, whereas conciliation and mediation, if they fail to resolve a persistent dispute, leave the disputants to their own devices to resolve the impasse by engaging in the damaging sanctions of the strike or the lock-out. It will be seen, therefore, that Impartial Adjudication invariably provides a terminal point for the resolution of all disputes subject to its processes, whereas conciliation and mediation do not. Impartial Adjudication provides the elements of finality, conclusiveness, and stability in the settlement of disputes, which conciliation and mediation lack.

The essence of Adjudication has been aptly described by Professor Fuller as follows:

"The distinguishing characteristic of adjudication lies in the fact that it confers on the affected party a peculiar form of participation in the decision, that of presenting proofs and reasoned arguments for a decision in his favour. Whatever heightens the significance of this participation, lifts adjudication towards its optimum expression. Whatever destroys the meaning of that participation, destroys the integrity of adjudication itself."[1]

Professor Brown, the author of the Task Force on Labour Relations Study of Interest Arbitration, comments on Professor Fuller's concept of true adjudication as follows:

"This distinguishing feature of adjudication is a form of social ordering – that it confers on the affected parties a peculiar form of participation in the decision, that of presenting proofs and reasoned arguments to the adjudicator for a decision in their favour – gives rise to several implications: (1) It is a device that gives formal and institutional expression to the influence of reasoned arguments; and reasoned arguments mean that decisions must be arrived at or explained by logical or analogical development of given or stated premises. (2) As such, it converts the questions or issues submitted for decision into claims of right or accusations of fault. The conversion is affected by the institutional framework. As part of the process, the affected parties have the opportunity of presenting proofs and reasoned arguments. The participant therefore, if his participation is to be meaningful, must assert some principle or principles to which his proofs can be related, and upon which his argument can be premised. A claim of right is distinguished from the naked demand by the fact that a claim of right is supported by principle. Accordingly, because of the manner of participation afforded the affected parties, the issues tried before a decision-maker, acting as an adjudicator, tends to become turned into claims of right or accusations of fault. (3) Obviously, therefore, for adjudications to be meaningful, there must exist 'principles' or 'criteria of decision' common to the dispute and capable of being rationally elaborated and supplied in making the decision, and of a sufficient character and quality for proofs to be made relevant and to which argument can be rationally related."

He goes on to add that the participatory benefits of adjudication are enhanced by the *"requirement that the decision-process not be instituted by the adjudicator, but rather that it be left to the initiative of the parties affected, assures that the adjudicator will not develop pre-conceptions without the parties having had the opportunity to present their proofs and make their argument. The custom of requiring written reasons enables the parties to confirm their participation in the decision and thereby enhances its acceptability."*[2]

Compulsory Arbitration – or, as the Committee prefers to call it, Impartial Adjudication – is designed and employed in the context of employer-employee relationships to determine two different types of disputes – "interest" disputes and "rights" disputes. An "interest" dispute is concerned with what terms and conditions should regulate a particular employer-employee relationship. A "rights" dispute is concerned with defining and enforcing the rights of the parties where a particular employer-employee relationship has been formalized by the execution of a Collective Agreement defining that relationship. Put another way – an "interest" dispute concerns what terms

and conditions shall be incorporated into a Collective Agreement between the employer and his employees, whereas a "rights" dispute concerns the interpretation, definition and enforcement of the rights and obligations of the parties, once the "interest" dispute has been determined and a Collective Agreement between the parties has been consummated.

Compulsory Arbitration or Adjudication of "rights" disputes between employers and their employees, both in the private and public sectors, have long received both legal and public approval. At both the Federal and Provincial levels, "rights" disputes must be determined by arbitration and strikes and lock-outs are prohibited during the lifetime of the Collective Agreement. The resolution of "interest" disputes by Compulsory Arbitration unfortunately has not received the same degree of public acceptance. In the private sector, Compulsory Arbitration to determine "interest" disputes, has rarely been employed, except in isolated cases where either the Federal or the Provincial Government concerned has intervened either to prevent or to terminate a strike in an essential industry where the public interest is seriously affected. Thus Federal ad hoc Legislation has twice compelled the arbitration of Railway disputes, and during the recent strike of the Air Controllers against their employers, the Airlines, there is a strong suspicion that further ad hoc Legislation would have been passed ending the strike and imposing Compulsory Arbitration of the dispute, had not the parties been persuaded to voluntarily agree to Arbitration. Similarly, in the Province of Ontario, the Provincial Government by ad hoc Legislation has twice compelled the arbitration of "interest" disputes between the Hydro workers and their employers. It is in the public sector, however, that Compulsory Arbitration of "interest" disputes is more and more being recognized as the terminal point of Collective Bargaining and as a viable alternative to the strike and the lock-out. In the Provincial field, most of the Provinces, including Ontario, require Firemen and Policemen to submit their "interest" disputes with their employers for determination by binding arbitration. Some of the Provinces, including Ontario, require Hospital workers to submit their "interest" disputes with their employers for determination by binding arbitration, while the Province of British Columbia and Manitoba (and the Province of Quebec, until the recent repeal of Bill #25, recounted elsewhere in this Report) require teachers to submit their "interest" disputes with their employers, the school boards, for determination by binding arbitration. In addition, employees in essential industries or occupations are forbidden to strike and are required to submit their "interest" disputes to binding arbitration as follows:

Public Service Workers . . . Alberta, Manitoba, Ontario, New Brunswick.

Public Utility Workers . . . British Columbia, Alberta, Manitoba.

Telephone Employees . . . Manitoba.

Liquor Commission Employees . . . Manitoba.

In the Federal field, the Public Service Staff Relations Act prohibits from striking those employees or classes of employees "whose duties consist, in whole or in part, of duties, the performance of which . . . is or will be necessary in the interest of the safety or security of the public." In addition, the Act provides that upon certification, the bargaining agent representing Public Employees, is obliged to elect between arbitration and strike as the method it proposes to pursue for the resolution of "interest" disputes with the Government, subject only to the Union's right to re-elect and to the designation of non-striking essential employees. It is this voluntary surrender that creates the binding obligation to arbitrate. It will be seen, therefore, that in Canada generally, and in Ontario in particular, there are now very strong precedents for requiring Public Servants and those engaged in essential industries to forego the right to strike and to submit their "interest" disputes with their respective employers for determination by final and binding arbitration.

The opposition to compulsory arbitration of "interest" disputes centres mainly on the following objections:

1) Compulsory Arbitration tends to inhibit and frustrate Collective Bargaining, in that the disputants may shirk their responsibilities by shifting them to the arbitration tribunal.

2) No clearly recognized criteria exists for determining "interest" disputes and there is no real jurisprudence of arbitration of this kind of dispute.

3) The absence of access to relevant and accurate data renders arbitration more inquisitorial than adjudicative.

4) Ad hoc arbitrators have a tendency to strike a compromise between the last positions of the parties.

5) Compulsory Arbitration does not prevent strikes — it only makes them illegal.

The Committee is confident that whatever validity these objections to Compulsory Arbitration may have, they can be overcome by the system of Impartial Adjudication which it envisages for the determination of teacher-trustee "interest" disputes. The provision for a permanent Adjudicative Tribunal consisting of independent, disinterested and impartial adjudicators, should eliminate any tendency to arrive at an accommodation award often charged against the ad hoc arbitrator of "interest" disputes. The provision of a Professional Research Bureau to provide the parties and the Adjudicative Tribunal with up-to-date, accurate and relevant data, which the parties and the tribunal can accept, should prevent the hearing before the tribunal from becoming inquisitorial, and should insure that it is truly adjudicative. Legislation setting up the Adjudicative Tribunal can provide it with the criteria for decision-making. In this connection, the provisions of the Federal Public Service Staff Relations Act are relevant and material. That Act sets up a permanent independent tripartite arbitration tribunal and directs it in the proceedings before it, and in rendering an arbitration award in respect to the matter in dispute, to consider:

a) the needs of the Public Service for qualified employees;

b) The conditions of employment in similar occupations outside the Public Service, including such geographic, industrial, or other variations as the arbitration tribunal may consider relevant;

c) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation, and as between occupations in the Public Service;

d) The need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed, and the nature of the services rendered; and

e) any other factor that to it appears to be relevant to the matter in dispute.[3]

The Committee is satisfied that appropriate criteria, already described in Chapter 5, can be devised to guide the deliberations of the Adjudicative Tribunal in determining teacher-trustee "interest" disputes. Furthermore, the Adjudicative Tribunal, as it gains experience in the intricacies and complexities of the teacher-trustee relationship, will, no doubt, develop its own criteria for decision and in time will establish a real and meaningful jurisprudence in this field. Legislation setting up the Adjudicative Tribunal for the determination of teacher-trustee "interest" disputes, can arm that tribunal with power to penalize one or both of the parties to an "interest" dispute who can be affirmatively shown to have failed to bargain in good faith. Such penalties could include fines, costs, punitive costs, loss of privileges, such as the compulsory check-off, the loss of benefits, such as retroactivity of benefits granted by the Finding.

It now remains to comment on the objection to Compulsory Arbitration of "interest" disputes that it does not prevent strikes or lock-outs but that it only makes them illegal. The Committee concedes that no legislation, no matter what sanctions it may contain to deal with its breach, can prevent illegal activity. This can hardly be considered as a logical argument for having no legislation at all to prohibit strikes by teachers and lock-outs by trustees, which would have such a damaging effect on the educational system of the Province, to say nothing of the damaging effects which they would have on the students and the public at large.

The Committee has already referred to the Legislative tradition established in this Province, that "interest" disputes of Public Servants and those engaged in certain essential and vital occupations, must be determined by Compulsory Arbitration and not by the savage sanctions of the strike and the lock-out. If the position taken by the Legislature of this Province is the correct one in the case of Police, Firemen, Hospital employees, and its own Civil Service, it is difficult to argue that the same position should not be taken with the teachers and the school boards of Ontario who provide such a vital service to the citizens of this Province. It can hardly be argued that the education of the young is less important to the welfare and destiny of this Province than is the health of its citizens, their protection from fire and crime, and the provision to them of Government services. This Committee, therefore, has no hesitancy in recommending compulsory and binding adjudication to be the only legal method of determining teacher-trustee "interest" disputes.

References

1. Fuller: *Forms and Limits of Adjudication;* unpublished manuscript, 1958.

2. Brown: *Interest Arbitration;* pages 9-10.

3. Statutes of Canada 1967, c 76 - s 68.

Chapter 8
The Recommended Model/Joint Negotiations

In Chapter 12 of this Report, the Committee of Inquiry will summarize its conclusions and recommendations, setting down in logical sequence the model which it is recommending for joint negotiations and joint consultation in the professional relationships between teachers and school board trustees. In order to establish the rationale for Chapter 12 and especially for the aspects of it which will be new to the Ontario educational setting, this chapter and the one that follows it will discuss and explain at length four important ingredients of the model.

This chapter will deal with I The Negotiation Process; II Professional Research Bureau; and III Adjudicative Tribunal.

The succeeding chapter will deal with Joint Consultation.

I The Negotiation Process

"Let us begin anew, remembering on both sides that civility is not a sign of weakness, that sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate."

John F. Kennedy

The salient purposes of the recommended model for joint negotiations outlined in this Report are: (a) ready agreement, and (b) avoidance of irrational or emotional conflict between the school authorities and those who teach in the schools. Differences of opinion between these two parties, with divergent responsibilities and interests, are inevitable, and may not be entirely undesirable. In simple terms, the one party is responsible to the ratepayers for keeping school costs down, while the other party has an essential interest in ensuring equitable compensation for services rendered. What is undesirable, and widely proclaimed during the hearings of the Committee of Inquiry to be unacceptable, is conflict carried to the point where the objectives of the school system are submerged in an internecine power play. From every side, from teachers, from trustees, from the public, the Committee of Inquiry heard pleas to find a "better way"; to find a clean, effective substitute for strife and rancour, for sanctions and force, at the same time preserving the ability of the parties to fulfil their responsibilities.

This is a high objective, and the Committee has aimed high. The recommendations, it believes, are practical and realistic, at this time, and in these circumstances.

In Chapter 5 the cardinal points in the proposed joint negotiation model have been precisely outlined. These cardinal points have been labelled "principles", and there are three of them. Joint negotiations on compensation levels is established as a majority right and legal obligation; a wage and compensation policy provides a necessary criterion for rational negotiations; and finally there is provision for impartial evaluation of relevant data, and in the event of impasse binding determination.

The philosophy and working of major segments of the model are discussed elsewhere. The purpose of this section is to elaborate, in some degree, on the actual joint negotiation process. The proposed model, of course, differs greatly from the strife-ridden system at play in the private sector. The distinguishing features have great significance and need careful understanding at the outset.

Consider these points:

1) The parties will arrive at the negotiation session with professionally prepared information — not with partisan material prepared as support for one point of view, but with relevant, independently researched data. Facts, or their relevancy, should not be a subject of bitter controversy or disputation. If this occurs at first, for well it might, as the system matures a body of adjudicative jurisprudence will soon emerge to guide the parties.

2) The model requires, indeed enshrines as a basic principle, that negotiations centre on this data. Agreement will emanate from the mutual acceptance of relevant compensation comparisons, not from threats of withdrawal of services or withdrawal of employment opportunities.

3) Persistent disputes will be determined on the same basis, with the adjudicator using the same data gathered from the same source, up-dated only if delay demands.

Here is the way the process would look in action:

Two months, or thereabouts, at the will of the parties, before the end of the existing professional agreement, both the teacher and trustee negotiating authorities will take steps to ensure that their data on compensation levels is current and complete. If not, the parties, individually or jointly, will apply to the Professional Research Bureau for new or supplementary information. Whether or not they apply jointly, it is understood there will be no surprise or secret information introduced into the negotiations.

Nor should negotiation information be withheld from the teacher or trustee entities as a whole, or from the interested public. The parties, it is expected, will soon come to the conclusion that the negotiation process will be better understood and facilitated if all concerned are kept specifically and continuously informed of facts and developments. A major cause of strikes (about 15 percent in recent years) has been traced to the phenomenon of

untoward expectations — expectations founded on exaggerated reports of other negotiations and other unsubstantiated evidence.

Equipped with the same information, and committed to the basic principles in the model, the parties, and their negotiating authorities, it can be expected, will take a reasonable and supportable position at the outset.

The substitution of rational, logical, fact-based decision making for what the Webbs called, "the higgling of the market"[1], over fifty years ago, is vital to the negotiation concepts proposed here.

An outline of contrasting negotiating styles should serve to distinguish clearly the undesirable from the new, proposed style.

Here is what takes place too often today, first, in the words of a company negotiator:

"Collective bargaining is akin to eastern bazaar haggling. The union comes in with a flock of blue sky demands and we put up our best front that no change is called for. We reject accusations that we are offering nothing by saying, 'We are prepared to continue the existing high level of benefits.' — knowing all the time that we have to do something to keep competitive in the labour market. Later, when we think we know what the union will settle at, we make an offer to get them moving. We always gauge our 'final' offer to leave something for the union committee to demand as a price for their commitment to recommend settlement. On the other hand, if we think the mood is for strike regardless, we leave something out of our 'final' pre-strike offer to settle the strike."

The same negotiation process is described by the union:

"No matter how realistic we are the management will cut our proposal in half. So the thing we have learned to do is to get the membership sold on a really high figure and go to the table with their authority to call a strike. Then we sit there and call on management to make its offers. If they offer enough we make a deal and tell the members that is all we can get. If management is slow to move, or doesn't move far enough, we take their last offer to the members and ask them to turn it down. This usually brings another offer, and, of course, every time this happens our members know management would have cheated them if it hadn't been for the union."

In contrast, the proposed negotiation process would sound like this, regardless of who described it:

"The purpose of joint negotiations is to update salary levels to correspond to any changes which may have taken place in salary levels for comparable occupations in industry and commerce. Everyone is agreed that school teachers' compensation, whether it be salaries or benefits, should not be allowed to fall behind other similar groups. Both the trustees and the teachers keep themselves informed, through their Professional Research Bureau, on changes in compensation levels. During negotiations, we discuss the changes elsewhere and the application these changes should have to our salary scales. As we are always talking in terms of valid data, and how it relates to our agreed salary policy (we call it the "first principle"), there is no need in our negotiations for false positions or blue sky demands or ridiculous offers."

Persistent disagreements, allegations of "stalling", "sanctions" or any other unprofessional activities, or an outright impasse in the procedure, can be resolved by either party referring the negotiations to the Adjudicative Tribunal for final resolution.

The Committee of Inquiry confidently expects, however, that most of the teacher-trustee negotiations will be resolved locally, following the recommended procedures, with no need for impartial intervention.

II Professional Research Bureau

Joint negotiations can be carried on intelligently only if all negotiators engaged in the process are operating from a common base of statistics and facts. The Committee of Inquiry came to the conclusion early in its deliberations that a leading cause of disagreement in the past has been the lack of reliable and accurate data. As a matter of fact it became apparent, as a result of information presented by both teachers and trustees, that the procedure developed in practice over the years was the collection by each side of its own data, which, then, often differed markedly from the data collected by the other side. It is little wonder, therefore, that negotiations between teachers and school boards have been hampered, and even damaged, by unavoidable misunderstandings, mutual distrust, and intolerance of opposing documentation and conclusions drawn therefrom.

The Committee of Inquiry, therefore, is convinced that teachers and trustees must embark upon a joint venture to ferret out the pertinent data, to make it available to all teacher and trustee negotiating groups, and to provide the identical information to the Adjudicative Tribunal which will be described in the next chapter. The net result would be that all those engaged in the teacher-school-board negotiation process would be operating from a single common base of pertinent and valid information. Indeed, carefully researched and complete data is essential to the successful deliberations and findings of the Adjudicative Tribunal and to attainment of the *First Principle* enunciated in Chapter 5, namely that " . . . the teachers and the staff employed in the elementary and secondary schools

of the Province will be compensated for their services at a salary and benefit level equivalent to the salaries and benefits paid for occupations of equivalent skill in the wealth-producing sector of the Province . . . "

The Committee of Inquiry recommends, therefore, the establishment of a Professional Research Bureau.

Composition and Staffing of the Bureau

The work, activities and research of the Professional Research Bureau should be under the direction of a Joint Committee on Research composed of ten members, namely five teacher representatives and five trustee representatives selected respectively by the Ontario Teachers' Federation and the Ontario School Trustees' Council. The chairmanship should alternate each year, a representative of the teachers succeeding a representative of the trustees or vice-versa as the case may be.

The Joint Committee on Research should set up its own permanent staff. The staff need not be large, perhaps consisting of a Research Director and a secretarial assistant, because it could establish liaison with a number of sources which have banks of data. These sources include Statistics Canada, the federal and provincial Pay Research Bureaus, the Research Division of the Federal Department of Labour, and the Research Division of the Ontario Department of Labour. In addition there are many studies and surveys that have been done, and are being done on a continuing basis, by a number of consultants and organizations.

The Professional Research Bureau should be financed through the budget of the Ontario Ministry of Education. The Joint Committee on Research would have the responsibility of preparing its budgetary requirements for each fiscal year, and of presenting its estimates to the Ontario Ministry of Education for approval. Major items of expenditure would include salaries of permanent staff, cost of obtaining research data, office accommodation, equipment and supplies for permanent staff.

Relationships to the Adjudicative Tribunal

As mentioned earlier in this Chapter, all data prepared at the direction of the Joint Committee on Research by the permanent staff of the Professional Research Bureau must be forwarded immediately to the Chairman of the Adjudicative Tribunal. Each item of material should be supplied to the Chairman in the number of copies requested by him.

Furthermore, the Chairman of the Adjudicative Tribunal must have the right to request that the Joint Committee on Research instruct its permanent staff to study, research, and submit data in any area in which the Chairman or the members of his Tribunal feel the need for accurate information.

In order to facilitate the liaison referred to in the previous two paragraphs, it would be desirable that the office accommodation of the Professional Research Bureau permanent staff be in close proximity to the offices of the Adjudicative Tribunal.

Finally, the Chairman of the Adjudicative Tribunal should be the ultimate authority in the resolution of any dispute arising in the Joint Committee on Research. He must not, and cannot on the basis of personal time limitations alone, become involved in the day-by-day administration of the Professional Research Bureau. He has no authority over the Joint Committee on Research or over its permanent staff, except for the right, as mentioned above, to receive and to request information. But, in the final analysis, if a dispute must be settled, the Chairman of the Adjudicative Tribunal is the only feasible person to resolve such a problem.

III Adjudicative Tribunal-Impasse Resolution

The Committee of Inquiry has come to the decision in Chapter 6 that a strike by teachers is inconsistent both with the principle of professionalism and with the public purpose involved in the educational system. Quite apart from this finding, however, the Committee is satisfied that an alternative to the strike for the determination of disputes not only is feasible but also is practical and realistic.

We begin from the basic tenet, the *First Principle* enunciated in Chapter 5, that school teachers should be remunerated suitably to their professional standing and their function in one of the most important endeavours in this Province. The many briefs submitted on behalf of various teachers' associations state that teachers want no more out of the system for their work than is their due, bearing in mind their professional status and comparable remuneration in comparable employment in the private sector. There was a time when teachers were underpaid for the responsible service they rendered, and their status and professional aspirations were not accorded the recognition teachers deserved. In the last decade, however, helped by combined collective action, they have achieved parity with comparable employee groups, and they have gained in large measure the professional status to which they are entitled.

The Committee is of the conviction that conflict and strife is not necessary in the process of negotiating salaries and other matters. There is no need to "choose up sides and have a fight"; it is a crude and unsophisticated way of settling disputes wherein the stronger party will always win, and the weaker will always lose. This technique has the fundamental weakness inherent in it that it thrives on power, and yet the balance of power may shift very quickly from one side to the other, for various reasons, with the result that the party that has enjoyed supremacy for many years may all of a sudden find itself at the mercy of its opponent. In this regard, for instance, the recent influx of many new teachers on the market, as well as the decline in the number of pupils coming into the elementary and

secondary schools, has for the moment placed teachers in a weak bargaining position and trustees in a very strong position.

The Committee of Inquiry is of the unanimous opinion that the terms of employment of teachers by their respective school boards should be decided on more rational grounds. It is for this reason that the Committee recommends the establishment of an Adjudicative Tribunal, to determine on rational grounds and on the basis of proper comparables the suitable remuneration for teachers in the school system. There is no place in the school system for conflict and friction. The public purpose inherent in the educational sector of our economy requires that employer and employee, trustee and teacher, work together rather than at odds with each other. Each has a rightful place in the system, and each has a right to impact upon all parts of the system; and for this reason, then, in the following chapter we have recommended the establishement of a permanent School Board Advisory Committee, being a joint committee primarily composed of teachers and trustees, to ensure to teachers an advisory voice in all aspects of the educational system. In the area of salaries and other areas of compensation any disputes should be settled by reference to an impartial and independent third party and not by often unproductive and destructive methods which promote continuing conflict and mutual distrust.

The Committee of Inquiry, therefore, recommends that where the negotiating entity of teachers cannot arrive at a mutually agreed upon professional agreement with their employer, the school board, both parties refer the areas of disagreement to an independent, wholly impartial, adjudicative body, called the Adjudicative Tribunal, for determination of the outstanding issues. The Tribunal would sit in a panel of one adjudicator and after full submissions by both parties would make a final and binding decision based upon the merits of the case. The Adjudicative Tribunal would consist of a permanent Chairman and one or more Vice-Chairmen appointed by the Lieutenant Governor-in-Council on the advice of the Minister of Education. There would also be appointed to the Adjudicative Tribunal a panel of impartial part-time members, also appointed by Order-in-Council on the advice of the Minister of Education, and these part-time members would exercise such duties as might be allocated to them by the Chairman or the Vice-Chairman of the Adjudicative Tribunal.

One of the most frequent comments made to the Committee in opposition to the concept of third party adjudication was the fear expressed both by trustees and teachers that third party adjudication is an accommodation of the parties to the dispute and is based upon expediency rather than upon merit. The fear is based upon the many instances found in the private and public sector where arbitrators have in fact "split the difference" and awarded settlements somewhere between the two extremes. The Committee cannot emphasize enough its conviction and firm recommendation that the members of the Adjudicative Tribunal are not to decide on the basis of accommodation and expediency, but are rather to decide on the basis of merit. They shall decide on the preponderance of evidence put before the Tribunal and shall make a finding accordingly. It is critically important, and it is one of our recommendations, that the Adjudicative Tribunal must consist of persons of the highest qualifications, and that the Tribunal shall look like a court, and shall act like a court, and shall decide solely on the basis of the merits and the evidence before it as to what is a just and proper resolution of the issues submitted to it.

We have seen in too many instances third party arbitrators come to decisions that accommodate and attempt to appease both sides, and as a result, fail to satisfy either. In our humble opinion this is so because of a number of failings. One of these is the lack of adequate impartial data available to arbitrators. The Committee, therefore, has recommended the establishment of a Professional Research Bureau in order that all parties, including the Adjudicative Tribunal, may have before them the statistical, factual data and sources of information relating to any and all the issues before the Tribunal. This evidence will give the Tribunal the necessary base upon which to establish comparable salaries and other items of compensation, and will allow the Tribunal to establish criteria for comparability relating to the numerous items brought before it. Rather than being at sea, therefore, without concrete facts and comparisons on which to rely and being forced, therefore, to choose in the middle in order not to effect great injustice to either side, it is hoped that the establishment of the Professional Research Bureau will assist the Tribunal to arrive at proper, well-founded adjudications.

It is implicit in our recommendation, and indeed it is critically important, that all statistical data compiled by the Professional Research Bureau shall be automatically made available to the Adjudicative Tribunal and not only on request. It is the view of the Committee that the Professional Research Bureau would constantly update the facts and figures in their information bank, and make that updated data available to the Adjudicative Tribunal as well as to any party that requests it. It is a corollary to this recommendation that the Adjudicative Tribunal shall have the right to instruct the Professional Research Bureau at any time to compile figures and information on any matter and of any kind which in the opinion of the Tribunal might

be useful in comparing or contrasting any facts or situations in the teacher-school-board relationship to those in other sectors of the economy.

A second failing that can be found in a number of third party arbitrations at present is the selection process of the arbitration board wherein one party appoints one member, the other party appoints the other member, and then the two choose an impartial chairman; or alternatively where both parties are represented on the board by one member each and the third member is an impartial chairman. In our view such a system cannot do other than accommodate the parties. The "sidesmen" attempt to influence the thinking of the impartial chairman, facts are often brought into the deliberations of the arbitrators which were not properly adduced before the board, and the final decision reached is most likely a compromise. For this reason we have recommended an Adjudicative Tribunal, all the members of which shall be impartial, and have recommended further that the Tribunal shall sit in panels of one for each dispute. All the evidence and arguments must be properly adduced before the Tribunal, although the rules of evidence should not be made to apply strictly to the proceedings, and it is hoped that the Tribunal will see its function as that of a court and will decide the dispute accordingly.

A third failing, albeit a relatively small one, is the practice which presently occurs in many cases of third party arbitration, where either side or both sides present to the arbitration board the report or decision of the conciliator or the conciliation board. This practice is totally contrary, in our view, to proper procedure, and can only serve to negate the fundamental purpose of the adjudicative process. What a conciliator may have recommended in an attempt to bring two parties together, or what a conciliation board may have decided in the same context, cannot be and should not be relevant to the deliberation of the adjudicator. The former is an attempt at expediency and accommodation of the parties; whereas the latter must have its basis upon equity and merit. For this reason, the Committee recommends that evidence of the report of a conciliator or a conciliation board be inadmissible and improper evidence before the Adjudicative Tribunal. The Tribunal shall decide on the basis of facts and figures and cold statistical data rather than on the back room negotiations of the two parties. On the other hand, if during the course of the adjudicative process the two parties come to terms on any of the issues before the Adjudicative Tribunal, they shall of course have the right to withdraw those issues from the adjudicative process by filing the appropriate minutes of settlement with the Tribunal.

It is a further recommendation of the Committee that all decisions of the Adjudicative Tribunal be in writing and be reported, and that reasons be given with each award so that a body of law can in time be established and so that the parties may be aware of the basis upon which the decisions of the Tribunal are given.

In the view of the Committee, as was mentioned earlier, the Chairman, Vice-Chairmen and members of the Adjudicative Tribunal must be of the highest qualifications. They should be of outstanding abilities, with education and training in political science, economics, sociology, labour relations, the theory of education, and preferably with experience in the field of labour relations law. The tenure of office for the Chairman and the Vice-Chairmen should be until the age of 70 years. The Chairman and the Vice-Chairmen should be removable for cause only on the recommendation of the Lieutenant Governor-in-Council. There should be no tenure for the part-time members of the Tribunal, and no part-time member should serve on the Tribunal after the age of 65 years.

The Adjudicative Tribunal should make periodic, and at the least annual, reports to the Minister of Education upon the workings of the Tribunal, and should make recommendations to encourage and suggest procedures for consultation and conferences between school boards and teachers with a view to promoting unity of effort, co-operation and progress in the school system. The Tribunal also should have the right to issue from time to time, and when it deems it advisable, such guidelines and policies relating to any matter within the jurisdiction of the Tribunal as it may deem advisable.

It is the view of the Committee that no decision, order, direction, award or ruling of the Tribunal should be open to question or review in any court, other than the newly-established Divisional Court, and that no order should be made or proceeding taken in any such court whether by way of injuction, declaratory judgement, certiorari, mandamus, prohibition, quo warranto or otherwise to question, review, prohibit, or restrain the Tribunal or any of its proceedings except on the ground of want of jurisdiction, and except as may be provided in the Act establishing the Divisional Court.

It is the belief of the Committee that the proposed system of adjudication will operate fairly, judicially and effectively in the setting of the Ontario educational system, and that the Adjudicative Tribunal proposed in this Report will earn the support and respect of both teachers and trustees in the Ontario elementary and secondary school system. The role to be played by the Professional Research Bureau is of significant importance in the adjudicative process and will be of great assistance to the Tribunal in many difficult cases.

The Committee of Inquiry is aware that some provincial governments have imposed ceilings on the amount of educational expenditures by the provinces. They have limited also the amounts that school boards can raise through local taxation. The concern of the Committee is the fact that ceilings may come into conflict with the decisions and awards of the Adjudicative Tribunal arrived at

on the basis of equity and merit and on the basis of comparable remuneration in other sectors of our economy. If such a direct confrontation should arise, which of the two factors should have supremacy? If the award of the Adjudicative Tribunal were to have supremacy, would this amount to an indirect power to impose taxation or to overrule ministerial policies? On the other hand, should teachers accept less than their fair remuneration? Should the school board use as a defence before the Adjudicative Tribunal that it has only a limited amount of money available for teachers' salaries?

The Committee is of the opinion that the process of adjudication must operate free from the practical constraint of a school board budget; otherwise the adjudicative process will deteriorate into expediency and accommodation. This is not to say that the Adjudicative Tribunal has not the right and authority to consider the entire school board budget in any proceedings before the Tribunal nor to view with scrutiny those portions of the budget dealing with other than salary matters. In the final analysis, however, the Adjudicative Tribunal should not be influenced in its deliberations by the budgetary restraint of the school board to pay, but should rather leave that problem to the school board and its financial advisers to be resolved.

Reference

1. Sidney and Beatrice Webb: *Industrial Democracy;* Longmans, Green, London, 1920.

Chapter 9

The Recommended Model-Joint Consultation

It is trite, and yet very important, to point out that education is one of the most important undertakings in Ontario and in Canada. Quite apart from the amount of money that is spent on education – and statistical documentation has been provided in Chapter 2 of this Report – the system of education implants learning, knowledge and skill into the future labour force of our country and is essential to our economic development as an industrial nation. It is, therefore, imperative that the system be of the highest order, and that it operate efficiently and with the least amount of disruption and discord.

Secondly, it is abundantly clear that the classroom is the front line of education. In the classroom, the teacher must put forth all the skills and talents which he has developed and in which he has been trained in order to mould the minds of the next generation of Canadians. Behind the teacher stands a support staff of educationalists, administrators, and the financial and technical resources of the Provincial Government. But the centre of the vortex, the focal point of the entire system, is the classroom and the individual teacher in his daily confrontation with those he seeks to teach.

We have stated our belief in Chapter 1 that teaching is a profession and teachers are professionals, skilled in the art and science of education. And this has necessarily compelled us to come to a third important conclusion: that is, that teachers must be given an effective voice in the operation of the system within which they exercise their skills. Today, education is no longer a lesson taken from a prescribed textbook; it is a "total environment" experience. The size and shape of the classroom, the development and use of audio and visual aids, changing teaching techniques, the pupil-teacher ratio, are all factors that have an important bearing on the learning process and the absorption rate of knowledge. They affect the ability of a teacher to teach and the way in which he teaches. It is wholly wrong in our view that the person who must work in this environment in order to produce the most essential product for our social, political and economic development, a professional person trained in the skills and techniques of teaching, should be denied a voice in these matters on the grounds that they form part of the "educational policy" of the school system. Teachers, in our respectful opinion, must have a right to impact upon the system within which they exercise their skills, and must have a right to advise and be consulted on all aspects of the educational process including those aspects which have been described by some as "educational policy". This we recommend not from the standpoint of any private interest benefit to be derived by teachers, but from the standpoint of the public interest and the positive benefits which will flow to the students in the system from any improvements thereof.

We have recommended that salaries and other items of compensation should be negotiable by teachers and school boards.* We have indicated, however, that matters of "educational policy" should not be negotiable items. What is required is a consultative machinery whereby teachers are given an effective voice in the establishment of "educational policy", and yet trustees retain the final word as to the implementation of that "educational policy".

The Committee has heard advanced, and advanced very forcefully, the argument put forth by some trustee groups that "educational policy" must be left in the hands of the school boards and their administrators, and that any incursion into these areas of management responsibilities would be detrimental to the educational system and would take the direction and development in the system out of the hands of those who have been elected and have been entrusted with that task by the public. In today's private enterprise system, management now accepts employee participation in an ever expanding number of traditionally "management" decisions because it is in the best interests of the enterprise and the public that the system operate efficiently and at its highest productivity level.

Surely this should apply with equal force in the school system of this province. If the concept is being espoused in private industry in cases involving labourers and their employer industries, what possible rationale can exist for excluding teachers, who from an educational, technical and professional standpoint have developed superior skills and abilities in the educational sector, from a positive role in the operation of the school system? Surely they must have the right to be involved in the decision-making process, to advise and to be consulted on the conditions and standards of the system in which they work and which have a great bearing on their professional performance. They may not have the right unilaterally to control and direct matters of educational policy, such as curriculum planning or classroom size, but they should have a voice, a right to be heard, and a right to be consulted on all matters relating to the operation of the school system in order that the system operate effectively and efficiently. At the very least, their advice should be sought, although it need not always be followed. The trustees are the acknowledged managers of the school system, and they are responsible to the electorate for the management thereof; but it would be a poor manager indeed who did not seek the advice of the professionals involved in the day-to-day affairs of the enterprise, and did not give this advice the weight and consideration that it merits.

*Mr. Onyschuk would substitute the words "related conditions of employment" for the words "other items of compensation", in line with his comments on Recommendation 6 dealing with the scope of negotiations, which comment may be found at pages 61-62.

The Committee of Inquiry, therefore, recommends the establishment of a permanent joint committee of teachers and trustees to discuss and formulate the direction of "educational policy" in the school system. The terms of reference of the joint committee should be broad enough, however, so that any aspect of the school system may be discussed by this joint committee or by a sub-committee thereof. Indeed, it is our hope that this joint committee, meeting on a regular basis, would discuss and determine most of the professional duties under which teachers are employed, thus making it unnecessary for these matters to be enshrined in the professional agreement at the time of its negotiation.

The establishment of a joint committee of teachers and trustees to consider and cope with the complex and difficult issues of running a school system is not new in the educational system, nor is joint consultation new in private enterprise. The use of joint committees as accessories to the bargaining relationship in private industry is certainly as old as collective bargaining itself. Some of the reasons for establishing such committees have been to facilitate the negotiation process where supportive data or technical judgements are needed, to remove chronically difficult issues or special problems from the bargaining table, to promote joint efforts to increase productivity, or to foster understanding and co-operative planning.

Joint consultation has existed in the United Kingdom, although with limited success, from the time of the Whitley Committee Report in 1917. In the last few years, the concept of the Whitley Works Councils has been revised and new successes in the field of joint consultation between labour and management has been achieved in various industries.[1]

In the school system, teacher-trustee committees to solve specific problems have existed prior even to the emergence of collective bargaining relationships. These committees have functioned, however, on an ad hoc basis, have been established only at the will of the school board trustees, and their control has remained largely within the hands of the trustees and their administrators.

Recently, however, in the United States, joint committees have entertained widespread usage in bargaining relationships between teachers and trustees to expedite the negotiation process. Since teachers' strikes are prohibited by statute in several states and have been consistently found to be illegal by the courts, there was a need for a suitable mechanism which would facilitate the process of reaching agreement. Secondly, while teachers tended to regard all matters as negotiable, administrators and school boards usually took the position that negotiations should be limited to salaries, hours, and conditions of employment, leaving educational policies exclusively within the control of the administration and the board. The intensity of this basic conflict appears to have been reduced by the use of joint committees as an adjunct to collective bargaining whenever educational policy matters have arisen as issues. These joint committees have given teachers, therefore, a voice in decision-making, while preserving discretion to the trustees in that the decision-*taking* has reposed with the school board and its administrators.[2]

We note with approval that a form of joint teacher-trustee committee has in recent years gained acceptance in Ontario. A host of teacher-trustee committees has been established in the last two or three years to cope with a number of assorted problems in the school system, including problems of "educational policy". A survey taken in June of 1971 by the Ontario School Trustees' Council indicates that, of 139 school boards in the province, 66 had at least one teacher-trustee committee established and functioning to discuss policy and other non-negotiable educational items.[3] The problem, however, is that less than half of the school boards of the province have any such committee appointed and operating, and, of the school boards that do, the composition and distribution of the committee, the frequency of meetings and the terms of reference are not standardized, and the weight given to the recommendations of these committees varies widely.

It is, therefore, the recommendation of the Committee of Inquiry that there be a permanent consultative committee established under the aegis of each school board, with equal representation by trustees and teachers, and with broad powers to consider all aspects of the school system — including professional duties and matters of "educational policy" — and to recommend changes or improvements therein to the full school board. The committee should be required to sit regularly, not less than once every two months, and to consider such aspects of the school system as it may deem advisable. It should be an ongoing dialogue and decision-making process whereby educational policy in all its aspects can be considered, discussed, and, if need be, changed.

It must be underlined that the consultative committee could not by itself implement its own decisions, but could only recommend action to the full board of trustees. On the other hand, it is equally important to underline that the Committee is not to function solely as a debating society, or a place where trustees will sit to hear the views of the teachers and then stalemate any resolution of the problems raised. Legislative enactment must ensure that the Committee functions properly and that both sides approach the issues at hand in good faith and with an open mind.

It is the view of the Committee of Inquiry that there should be some representation on the consultative committee by parent-teacher or home and school associations. This view is held primarily for the reason that our system of education should be reflective of and responsive to community needs, and for this reason some representation should be accorded to the community at large. It may be stated on the other side of the argument, however, that the trustees are representative of community concerns and interests, and in fact were elected for that very reason. Furthermore, there may be the concern, especially on behalf of the teachers, that the insertion of a third group into the consultative machinery would neutralize the effectiveness of the machinery and would not ensure to the teachers an effective voice in policy matters. On balance, we are of the opinion that two representatives of the parent-teacher or home and school associations should be included as part of the consultative committee. These associations consist of the parents of the children in the educational system, and represent that segment of the public which is most concerned with the system and its efficient and orderly functioning. Their presence would add the third element — the concerned public — to the interaction of teachers and their school boards, an element which at the moment stands helplessly on the sidelines in times of teacher-trustee crises. Their involvement in the discussions between teachers and trustees may give the concerned public a greater insight and awareness into today's problems in the educational system, and hopefully add a stabilizing influence at the appropriate time. For this reason, we have recommended the inclusion of two home and school association members to the Committee, although their presence on the Committee is not absolutely vital to its function and purpose.

Part IX of the Schools Administration Act provides a consultative machinery which, in the view of the Committee, can be made to suit these recommendations. The School Board Advisory Committee therein established would be made into a Standing Committee of each school board in the Province, and would consist of an equal number of trustees and an equal number of teachers, together with two persons selected by the home and school or parent-teacher associations in the jurisdictional area of the Board. We note that under Section 85. of the Schools Administration Act, the School Board Advisory Committee is to include the chief education officer of the board and four persons appointed by the board who are neither teachers nor members of the board. It is our recommendation that the School Board Advisory Committee should consist of only teachers and trustees with some representation from members of the parent-teacher or home and school associations. The chief education officer of the board would in most cases sit in an advisory capacity to the Committee in any event, and would not be excluded from the deliberations except for the formal voting. The provision in the Act for the appointment of persons who are neither teachers nor members of the board should be deleted in that their appointment by the Board could raise allegations of bias, and the views of the interested public would already be represented on the Committee by the trustees and the parent-teacher or home and school associations.

The School Board Advisory Committee should have no restrictions placed upon it as to matters that may be open to consultation, discussion and recommendation to the school board, other than the one limitation found in Section 88. (2) of the Schools Administration Act dealing with matters relating to individual personnel problems. The subsection, therefore, should be amended accordingly. It should be understood that the personnel problems referred to in that subsection are taken to mean individual cases and are not to relate to the conditions of employment of teachers generally or to those matters of educational policy that affect all teachers or the school system generally. We make this recommendation because we are of the view that the School Board Advisory Committee should be able to consider, though not to negotiate, the question of salaries, or the "cost" if you will, of any of the proposals or recommendations placed before the Committee and should not restrict its discussions to educational policy, or even to educational policy and professional duties. It would be myopic and financially disastrous to consider any matter affecting the operation of the school system, or any professional duty, without considering the cost of its implementation. These considerations go through the minds of the trustee each year at the negotiating table, and there is no reason why they should not be tabled in the open and discussed in a forthright and candid manner by the Committee. If the teachers are to have an advisory role in the establishment of educational policy, then they must also realize the obligations that come with that office. And

they must also realize that with each downward adjustment of the pupil-teacher ratio there is added to the budget a salary cost for the additional teachers required to lower that ratio, with the result that less money is available for an increase in salaries to all teachers presently in the system. The same is true of every amelioration in professional duties and every change in educational policy, and the teachers and the School Board Advisory Committee will have to weigh the advantages against the disadvantages of each change. The advantages of this open dialogue, we believe, will become readily evident at the time of the salary negotiations after the first full year of the School Board Advisory Committee's existence.

It is furthermore of major importance that the recommendations of the School Board Advisory Committee should carry considerable weight with the school board and should not be rejected or refused except for the soundest reasons. It is important to note that the school board must retain the right in the final analysis to refuse the recommendation of the School Board Advisory Committee if the recommendation is not, in the opinion of the board, in the best interests of the school system. This right of the school board is a paramount right, for the exercise of which the trustees must account to the electorate. There must be a system of checks and balances, and the keepers of the public purse and trust must retain their accountability in the final analysis for the management of the system. In this regard, therefore, Section 88. (3) of the Schools Administration Act should remain in essence as it is, allowing the school board to reject the recommendations of the School Board Advisory Committee but not without giving the Committee an opportunity to be heard by the Board, and to be given reasons for rejection of its recommendations.

It is of paramount importance in the consultative machinery that the consultation not begin and end at the level of the school board, but rather that the consultation should exist at all levels within the school board system, descending down to the individual school and the teaching staff and administrators of that school. There is a need, therefore, for the establishment of one or more Sub-Committees of the School Board Advisory Committee, usually organized on the basis of a group of schools. These Sub-Committees should be large enough to fairly reflect a cross-section of teachers and administrators, by subject matter and by specialization, in order to ensure a considerable and representative input of ideas and points of view. The size of any Sub-Committee should be left to the School Board Advisory Committee to determine in order to preserve the flexibility needed to meet changing needs and specific problems. The size, however, should not reach a point at which the Sub-Committee becomes unwieldy.

The School Board Advisory Committee, and its Sub-Committees, should have available to them teachers who are expert in the various subjects and aspects of school curriculum. This, therefore, requires a representative selection of teachers to the School Board Advisory Committee and to the various Sub-Committes thereof in order that meaningful discussion, expert advice and useful recommendations result therefrom. It is also important that these persons be linked to the negotiating process, or indeed that some of them be members of the negotiating authority representing the negotiating entity, since the School Board Advisory Committee could be discussing on an ongoing basis many items, other than educational policy, which could otherwise arise at the negotiating table. In the result, therefore, there would be no unnecessary duplication of information (with the concomitant possibilities of communication gaps), there will be a uniformity of effort on the part of the teachers, and the trustees will not be faced with different positions at the negotiating table from those at consultative committee meetings.

Joint consultation through the School Board Advisory Committee is intended to augment the formal organizational line of communication between teachers and trustees. The Committee will not function properly if it is treated as a substitute for the formal channel of communication between teachers and trustees, or if the Committee is used by either side for any purpose other than a purpose set out in these recommendations. For example, the Committee cannot be used for the purpose of passing instructions or directives from the management level down to the teacher level. This function is to be carried out by the organizational line of communication, a channel which on the evidence before the Committee of Inquiry often appears to be operating inadequately.

One of the constant complaints heard before the Committee of Inquiry was the apparent breakdown in communications at the superintendent and principal levels in the hierarchy of the school board. Teachers indicated their frustration in not knowing what decisions were being made at the administrative level, and of not being able to communicate with the administration. Trustees acknowledged this same breakdown in communications and stated that it was aggravated by the establishment of the larger school board units. It is our hope that the School Board Advisory Committee and its various Sub-Committees will establish the necessary communication link between the teacher at the individual school level, the supervisory staff, and the trustees at the school board level. The formal line of communication, however, must be greatly improved also. The improvement must come at the Director of Education or Superintendent of Separate Schools, supervisory official, and school principal levels, where at the moment a bottleneck exists. The key link in the chain is, and must continue to be, the principal. He is the person charged with the responsibility of keeping his staff

informed of decisions made at the administrative level. He is also the person who must convey the views and opinions of his teachers on all matters to the supervisory staff and to the trustees. The restoration and improvement of this network of communication will ensure that vital dialogue between trustees and teachers will indeed take place, and that the entire system will begin to operate in a more concerted and harmonious fashion.

There is yet a final link of communication and consultation which must be established in the view of the Committee of Inquiry. It is a forum for consultation and decision-making at the Provincial level. There are a number of compelling reasons why such a province-wide forum should exist. A large part of the curriculum and educational programs established in the Province is initiated by the Ministry of Education and not by the administrators or trustees of local school boards. Secondly, a number of the problems that will come to be discussed by School Board Advisory Committees will have province-wide ramifications, or will involve some aspect of provincial regulation or jurisdiction. Finally, the Committee of Inquiry is well aware of the fact that Associations such as the Ontario Teachers' Federation, the Ontario School Trustees' Council, and the Ontario Association of Education Administrative Officials, meet periodically with the Minister of Education and his senior officials to discuss matters of mutual interest. This technique of consultation, while beneficial, is not, however, sufficient to provide the grass-roots input and multilateral exchanges of viewpoints needed on matters of educational policy and professional duties.

The Committee of Inquiry, therefore, recommends that there be established a Standing Consultative Conference to be convened at least once a year by the Minister of Education and to be chaired by him, with two permanent honorary secretaries, one appointed by the Ontario Teachers' Federation and the other appointed by the Ontario School Trustees' Council. Items for the agenda could be submitted by any association or individual. The composition of the standing consultative conference would be the Deputy Minister of Education and four of his senior officials, ten members of the Ontario Teachers' Federation of whom not more than five would be on the Board of Governors or on the provincial executive of an affiliate, ten members of the Ontario School Trustees' Council of whom not more than five would be on the provincial executive of the Council, five members of the Ontario Association of Education Administrative Officials of whom not more than two would be on the provincial executive of the Association, five members of the Ontario Federation of Home and School Associations of whom not more than two would be on the provincial executive of the Federation, two members of the Ontario Secondary School Headmasters' Council of whom not more than one would be on the provincial executive of the Council, and such other representation as the Minister of Education deems advisable.

The establishment of a strong, viable and workable consultative machinery in the school system is of paramount importance to this province at this point in time. The expenditure of almost $1.8 billion yearly in the elementary and secondary school system of this province is too large an amount of money and too great an investment to permit discord and inefficiency to exist. Harmony between the teachers on the one side and their employers on the other is a prerequisite to a healthy educational environment. The public purpose that would otherwise be jeopardized by friction between these two groups must be safeguarded at any price. The conflict need not exist if both groups come to the realization that, insofar as educational policy and decision affecting the running of the schools are concerned, both sides have a significant contribution to make. School trustees must surely realize that teachers, through their professional training and specialized expertise, have much to offer in improving the system in a qualitative and quantitative manner. School trustees must realize that joint consultation is not an abdication of their managerial responsibilities, but is rather an indication of their managerial maturity motivated to produce an efficient, well-run system of schools. Teachers on their side must surely realize that, despite their experience and expertise in the classroom, the final decision as to how the system is to be operated must rest with management, and that theirs is only the right to advise and not the right to decide.

The area of consultation must be juxtaposed against the area of negotiating over salaries and other items of compensation.* In the latter area, the interests of each group — teachers and trustees — are in conflict, and are legitimately in conflict. We have recommended in this report a method whereby it is hoped that the extent of the conflict will be minimized. In joint consultation, however, it is of the first order of priority that the emphasis be on solving common problems on an ongoing basis, and that the appropriate methods be co-operation and integration rather than contention and conflict.

References (See Bibliography)

1. Henderson: *The Case for Joint Consultation;* and *Some Examples of Effective Consultative Committees.*

2. Love: *Joint Committees: Their Role in the Development of Teacher Bargaining.*

3. Ontario School Trustees' Council: *Survey of Ontario School Boards Concerning Committees of Trustees and Teachers to Discuss Policy and Non-negotiable Educational Matters.*

*Mr. Onyschuk would substitute the words "related conditions of employment" for the words "other items of compensation", in line with his comments on Recommendation 6 dealing with the scope of negotiations, which comment may be found at pages 61-62.

Chapter 10
The Role of the School Principal

The Committee of Inquiry has considered the diverse and conflicting opinions in regard to the role of the school principal. The members of the Committee have not been able to agree on an important aspect of this matter, with the result that there are two reports included in this chapter. The Committee of Inquiry does not decry this development. It is healthier and more constructive and will better serve the purpose of this Inquiry to state explicitly the divergent views rather than to dilute opinions on vital questions merely to achieve unanimity in the report.

Part I of this chapter, endorsed by the Chairman and committee member Onyschuk, recommends, with some modification, the continuation of the status quo. The thrust of this Part I is to recognize the unique role of the principal, to argue that only the principal himself can work out his particular role, and to conclude, therefore, that the principal must be left free to make the choice as to whether he should remain in the teacher negotiating entity or whether he should join with a majority of his fellow principals in forming a principals' negotiating entity. The latter choice is contrary to official Ontario Teachers' Federation policy, but not to unofficial arrangements between principals and their affiliates of the Federation in the past, according to the understanding of the Committee members who are responsible for the presentation of this Part I. Nevertheless, if principals choose to form separate negotiating entities, the Ontario Teachers' Federation policy might require review.

Part II of this chapter, the report of committee member Hemsworth, recommends that the school principal be accorded official managerial status, and be designated as chief executive officer of his school, accountable to the public through its elected and appointed officials for the management of the school and the achievement of its predetermined educational objectives. With clearly delegated authority, the school principal, after due consultation with his staff, would assign duties, including so-called "extra curricular" duties, and ensure that all duties and assignments are performed in accordance with predetermined objectives. This approach, amongst other things, would resolve any misunderstandings concerning "work-to-rule" or teacher initiated "study sessions".

Part I: The Unique Position of the Principal

The argument that principals should make the decision to be, or not to be, in the teacher negotiating entity is based upon the peculiar position of the school principal. In actual fact, there is no other position in society comparable, to any degree of validity, with that of the school principal. The school principal, in effect, must fulfill a number of roles, each of them distinctive, but each of them complementary if the principal is to maintain his place or, in plain words, if he is to survive.

As the senior curriculum builder in his school, he is responsible to his students and their parents, in the sense that he must ensure that the curriculum (that is, the day-by-day learning experiences) provided for each student meets the individual needs of the student. As a scholar and an experienced educator, he is responsible to the teachers on his staff, for he must be their leader in professional development and in training for human effectiveness. As the chief administrative official in his school, he has the responsibility and the duty to see to it that the schools acts and regulations are obeyed; indeed, in this role, he is truly the front-line representative of the Minister of Education in his school. In the same connection he is duty bound to make certain that policies set under statutory authority by the school board, which has placed him in his position of responsibility, are carried out. Further, "Regulation-Elementary and Secondary Schools — General" enacts, as a prime duty of a Principal, that he "is in charge of the management and discipline of his school . . . ". In all of these roles, of course, he is strengthened by the supervisory and consultative assistance of the school board's administrative staff.

In summary, then, the school principal fulfills the roles, among others that have not been developed here, of curriculum builder, educational leader, professional consultant, administrative official, and, of significant importance, public relations man to all segments of his school community.

Any statement, then, that the role of principal is primarily one of being "the board's man" in the school is superficial and lacking in vision and careful examination of the actual situation.

The principal could not possibly carry out his various roles without the loyalty and support of his teaching staff. He can give leadership as the senior curriculum builder, but only his teachers can mould the structure, and convert it into educational experiences for girls and boys. He can plan and develop in-service training sessions for teachers, but the teachers will get out of them only what they are ready to give of themselves. He can announce Ministry of Education regulations and school board policy statements, but he must depend upon his teachers for their implementation. The basic fact, then, is that the principal and his staff form a team, a team of educators who must have similar philosophies, procedures, and objectives, if the work of the school is to be orderly, pertinent and effective.

Nothing in this statement suggests that the principal is an equal among equals. He is the leader, the first among equals, and his teachers would be the first to recognize and state this fact of life. Just as the members of an athletic team work with their coach and take orders from him, in like manner teachers not only co-operate, collaborate, and toil with their principal in developing overall strategies for better learning procedures and their implementation in the school but also they take directives and enforce them in accordance with their duties under the Regulations and with their sense of professional loyalty.

The role and functions of principals in other jurisdictions are interesting to the present discussion especially since the impressions gained by the majority of the Committee seem to differ in certain respects from those of the minority. In the United States of America today there is a great movement to project the principal as the educational leader in his school. A significant facet of this well-organized program is the restructuring of administration within the school to enable the Principal to become an "educational leader" or "master teacher" who will delegate all administrative routines to other personnel and will concentrate on the quality of the educational program.[1] The National Association of Secondary School Principals is now in its third year of a "Model Schools Project", one basic goal of which is to "separate the principal's role in instructional improvement and general supervision from management tasks that can be done by other persons."[2] At the same time, the American Association of School Administrators, the Association of School Business Officials of the United States and Canada, the National Association of Elementary School Principals, and the National Association of Secondary School Principals have joined together to publish "The Administrative Team",[3] which, among other co-operative actions, recommends a negotiation process, including impasse resolution to members of all four of the component groups. In other words, the two national associations of principals see no dichotomy between the leadership function of a principal in his school and with his staff and his method of carrying on negotiations with his school board. In England and Wales to a certain degree, in some other Commonwealth countries, and in all the Provinces of Canada, the principal is part of the teachers' group, is termed a "teacher" and negotiates his salary, or has his salary negotiated, along with all the other teachers in the employ of his school board.

Although it has been said many times and at least once already in this chapter, it is not trite to add that the role of the school principal is unique and beggars comparison with that of anyone in any other field of endeavour.

Since only the principal can work out his role in his specific situation and since, therefore, only he can judge whether he can perform his role, as he sees it, to the best advantage of all concerned when he is a member of a teacher negotiating entity or when he is a member of a principals' negotiating entity, the majority recommendation of the Committee of Inquiry is that principals remain as part of the teacher negotiating entity, if that is their wish, or that, on a majority vote of a specific group of principals, they be allowed to form their own negotiating entity.

The majority opinion, it should be noted, differs from the minority opinion which follows in Part II mainly in the degree of emphasis placed upon the management function of the principal. The majority opinion, as pointed out earlier in this Part I, endorses the argument that the principal must be the manager of his school responsible to the school board, and is in accord with a great deal of the analysis of this function in the next part of this chapter. But it does not agree that this one function, vital as it may be, is jeopardized by the specific method of negotiation which the principal decides to elect in his relationships with the school board. The majority opinion of the Committee is that the negotiating process chosen by a principal or a group of principals must be accepted by the trustees concerned as a responsible action, and must not be imposed by school board edict, although meaningful discussion between principals and trustees could precede, with mutual profit and understanding to both sides, the decision of principals in this acknowledged important area of shared responsibility.

References

1. Hermansen and Gove: *The Year-Round School.*
2. National Association of Secondary School Principals: *The Bulletin;* May 1970, page 110.
3. AASA, NAESP, NASSP: *The Administrative Team;* Volume 1, Number 2, 1971-72.

Part II: Headmaster or Compeer?

Any form of collective bargaining or group negotiations has as its basis the adversary concept. There must, perforce, be two sides — two parties — representing two different views and attitudes and two different responsibilities.

Applied to the school system this raises the question: "Where does the school principal properly belong in these bilateral proceedings?" Is he Headmaster of the school, as of old, with all inherent authority, responsibility and accountability for the operation and management of the school and its staff? Or is he a senior teacher whose major responsibility is to his fellow teachers, working as their colleague and, on occasion, as their spokesman?

The purpose of this section is to re-examine the school principal's role following the advent of group negotiations between the school teachers and the school authority.

Historically conceived, and indeed as practised in industry, the sides in collective bargaining represent, on the one hand, the employer, and, on the other, the employees. In private sector bargaining, where this all began, the "employer" is the owner of the enterprise, or, more frequently today, the owner's appointed representative. In any case he is the person accountable to the owner, or the owner-shareholder, for the management of the enterprise.

"Employees", on the other side, are those (also employed by the owners, it must be remembered) not held accountable for managing the enterprise or for managing the work of other employees. They are accountable to someone, including themselves, for their own work, and they must, in most situations, co-ordinate their efforts with those of their colleagues.

In theory the division between the manager and the managed, between the governor and the governed, is clear cut.

In practice it seldom is. Much of the work of an administrative labour board is concerned with the determination, to the board's satisfaction, of the "employer" or "worker" status of individuals or groups. Stated more precisely, the board determines whether the job duties are of a managerial or non-managerial nature and on this basis it is decided on which side of the bargaining table an individual belongs. Labour boards in North America have developed a long, frequently contentious, line of jurisprudence as a basis for placing people on one or the other side of the bargaining table.

Complex as this decision-making is in the private sector, it is more involved in the public sector. Before the introduction of compulsory collective bargaining in the federal public service, to take the outstanding Canadian example, there was no real need to distinguish openly between those government employees who would be considered management and those who were not. In the view of the public, everyone employed by the government was a public service employee, or a public servant, as they were then called. Some people were, of course, directly accountable for the work of others, but the line of demarcation between the "manager" and the "worker" was obscure, unrecognizable, and frequently unnecessary.

The adversary concept, inherent in collective bargaining, made it necessary to allocate people to one camp or the other, to "choose up sides" as it were. Further complicating the question in the public service was the need to exclude from the full bargaining procedures employees performing essential services in a monopolistic situation. Loosely stated, the criteria development to meet this need sounds like this: "Can society accommodate, without irreparable harm to a strike by this person or group?" If the answer is "no" these employees are not granted full bargaining rights.

In other cases, The Public Service Staff Relations Board, in attempting to transplant collective bargaining into the government service, had to face some strange anomalies. Many senior and highly paid professionals, regarded by themselves and by society as individual members of the "managerial class" (whatever that is in our "classless" society) found themselves submerged in a group negotiating through agents — agents who dealt, not with their department heads, but with administrators from another branch of government. For not the least of the anomalies in the public service collective bargaining was the emergence of the Treasury Board as the "employer"!

Confusing indeed. And a long, tortuous detour from the route mapped out in the collective bargaining models of Wagner and PC 1003 wherein the employer-manager, responsible for the conduct and survival of the enterprise, was to meet face to face with those he employed for the purpose of settling between themselves, from time to time, the terms under which they would continue to work together.

Against this philosophical and empirical background, where should the school principal find himself when group negotiations come to his school?

Is he the Headmaster of the school accountable directly or indirectly to the trustees for the operation of his school and the administration of the teachers who staff it?

Or is he a Head Teacher working along and with his teachers in a colleagueship where none are accountable to him for their work or conduct, and responsibility for the operation and administration of the school and of the teaching staff is vested elsewhere?

The uninitiated layman or parent asked these questions would most likely favour the first. The public still seems to view the Principal as the chief administrative officer of the school, regardless of teaching or other duties he may perform. And in the past, without equivocation, he was the school's chief executive officer. In the days of the one-board one-school relationship he was not only the chief; he was frequently the only executive officer the board had.

In any event, the Principal's status, that is whether he belongs amongst the governed or is himself a governor, was not a moot question until group negotiations forced a "choosing up of sides"; a situation on the surface, not unlike that which prevailed in the federal public service before the advent of collective bargaining.

But there is another major force at play in the Ontario school system. This is the long standing statutory requirement that all teachers, including school principals are to be members of the Ontario Teachers' Federation.

Mandatory membership in the Ontario Teachers' Federation is a provision of the Teaching Profession Act, 1944. This Act, as its title signifies, was modeled, more or less, on acts governing other professional practitioners such as doctors, dentists and lawyers. The purpose of these latter acts was to confer on professional associations certain self-regulatory powers so that the association could ensure adherence by its members to essential ethical and professional standards.

The Teaching Profession Act did not grant the same self-regulatory power to the Ontario Teachers' Federation for the good reason that such power was not needed. Other professionals work for individual clients in the public domain, clients, for the most part, who are unable to evaluate the quality of the service or advice they receive. The public client, therefore, looks to the professional association to police the performance of its members on his behalf. The professional association is the public protector against exploitation, malpractice or plain inefficiency. This is the constitutional raison d'être for the regulatory power of professional associations whose members work in the public domain.

Teachers, on the contrary, are employees working for and accountable to legally constituted state boards authorized by the public to control and manage the schools. Professional advice and surveillance is provided to these lay administrators by the provincial Ministry of Education. It is more similar to an employer-employee relationship than to the professional-client relationship of other professions.

None of the professional acts, the Teaching Profession Act being no exception, was intended to set up any form of collective bargaining agency, nor to use the powers conferred on it by legislation to this end. The intent and purpose of the Teaching Profession Act, 1944, was to raise the professional competence of individual teachers at a time when there was a great concern about the general professional level of teaching in the Province. Mandatory membership was a means to this end; all the teachers were to be exposed to the professional principles, policies and ethics of the professional association. And it would seem natural and proper that the school principals should be members and play an integral part in this professional activity.

When a form of group salary negotiations began to emerge, many years after the Act, replacing the individual teacher-trustee relationship that formerly prevailed, it was perhaps not unnatural for the Ontario Teachers' Federation and its affiliates to take on the role of negotiating consultant, labour relations adviser and even, when the need arose, that of top-level negotiating agent.

It would follow, one might expect, that the Ontario Teachers' Federation would see itself as representing all its members. School principals, as statutory members, would be expected by the association to sit on the employee side of the negotiating table. As Ontario Teachers' Federation members, the school principals themselves probably tended to see themselves on the same side as their fellow Federation members — the teachers in their school. But the decision to join the teacher side of the table could not, one would think, have been made without considerable mental concern and conflict. For pungently stated, such a decision meant that the teachers in a school were given the right to negotiate their principal's salary, and even his role opposite them — an organizational situation certain to have an impact on his ability to direct his staff.

But Ontario Teachers' Federation policy appears to resolve the conflict, ruling, in essence, that "Principals are no more and no less than teachers". This is so, it was stated, because "Principals are teachers as defined by the Teaching Profession Act."[1]

In short, principals have been included in the teachers' negotiating unit because they are required by law to be members of the teachers' association — an association brought into being for purposes unrelated to professional negotiations.

This contentious role of the Headmaster ("Is he Head or Peer?") seems to be a sharper issue in Canadian jurisdictions where acts similar to the Ontario Teaching Profession Act prevail. Elsewhere, in the absence of mandatory association membership conditions, principals, while included by agreement in some cases, are more frequently excluded. In Wisconsin, where the state board has had extensive formal experience in the determination of bargaining units, principals have regularly been excluded from units of teachers.[2] It is noteworthy, also, that whenever an impartial person has been called upon, in United Stated jurisdictions, to make the final decision on the determination of the bargaining unit, principals, and other supervisory employees, have been excluded. On the other hand, when the decision was left to the parties or one of them, the result has been what one observer has called "a crazy quilt pattern that defies rational analysis or understanding."[3]

But history, theory and practices aside: what are the merits of including or excluding the school principal from his teachers' negotiating unit?

The briefs and verbal presentations made to the Committee of Inquiry in the course of its investigation are of limited help here. For without major exception both "sides", and indeed the Ontario Secondary School Headmasters' Council itself (admittedly a part of the Ontario Secondary School Teachers' Federation and presumably bound by Ontario Teachers' Federation policies), point to Ontario Teachers' Federation membership as the sine qua non in this determination. Consistently, the Ontario School Trustees' Council, in preparing its position for the Committee of Inquiry, polled its members, not on the question whether principals should be included in teacher units, but whether principals should be excluded from membership in the Ontario Teachers' Federation. Exclusion from Ontario Teachers' Federation membership, it must have been assumed, would exclude school principals from teacher negotiating units.

If, however, one treats Ontario Teachers' Federation membership as a non sequitur in the determination, what are the merits of the "pros" and "cons" to be considered?

The "pro" side, the case for including principals in teacher units, has been put forward in Part I of this chapter.

The "con" side rests primarily on fundamental organizational principles.

Every institution must have a "head". There must be someone accountable for the results expected of the institution. Without a head, anarchy and chaos are, sooner or later, inevitable. For history shows individuals working in such an institution will substitute their own professional and personal objectives for the institutional objectives, and the real purpose of the institution will be lost in a welter of diverse and opposing goals.

Parenthetically, the more highly motivated, the more resourceful and skilled the individuals are, the more likely is this to happen. One would be hard pressed to think of an institution more susceptible to this organizational sophistry than a school system.

To say, to be specific, that an institution can be effectively run by one who is only "a first among equals" is not merely naive; it reflects a lack of knowledge and understanding of the results of long years of organizational experimentation and research. In the words of a pedagogue: "Those who don't know history are condemned to relive it".

The high cost of the educational system today suggests, in the strongest possible terms, that Ontario cannot afford to repeat such expensive experimentation.

Carlyle, himself an erstwhile schoolmaster, makes this point in appropriate terms: "Experience is the best of schoolmasters, only the school fees are heavy".[4]

Responsibility and authority for the attainment of the educational objectives of each school must be vested in an individual. As stated, years of organizational experience, in every conceivable type of institution, from the British Army to the Roman Catholic Church, from the building of King Cheops' pyramid to the reconstruction of General Motors out of bankruptcy, from the management of a charitable campaign to the running of a government, including the USSR Government, from every conceivable type of institution, organizational planners have proved, beyond any doubt, that success demands the vesting of accountability in individuals rather than in groups, panels or committees. Only individuals can be truly accountable for results. With so-called co-operative or committee management everyone is responsible for everything and no one is accountable for anything. Committees or groups of peers do not manage; they discuss and too frequently destroy. In a successful enterprise, private or public, there must be one person at the head who is designated to say: " "Gentlemen, I understand your points of view — now, this is what we are going to do."

"You can search the public parks the world over", one authority on organizational concepts pointed out, "and you will find few monuments to committees."

A senior officer from a large organization once cursed with committee management, described its management committee as "a great velvet wastebasket into which disappeared, without a sound, all new, enterprising and creative ideas."

Centering, again, on the management of the school system, one of Canada's great educators, and a most experienced educational administrator, discussing this subject with the Committee of Inquiry, impolitely and irreverently remarked: "After all you cannot turn the lettuce patch over to the rabbits!"

Vulgarly stated, if the principal isn't accountable for the management of his school — if the principal isn't running the school — who in the whole, costly system is? The answer is so blatantly obvious the pencil seems to have difficulty making its mark as one writes it.

The principal must be in charge of the school.

Tragically, if for historical, out-dated legalistic reasons or social inertia, it isn't to be the principal, it can be expected that the trustees will find it necessary, in time, to nominate an administrator or manager (call him what you will) whom they can direct and hold accountable for the day-to-day running of the school and for ensuring that the predeterminated purposes of the school are achieved to the satisfaction of the public who own and pay for the institutions in the interests of the next generation, and the one after that and after that . . .

The appointment of such an administator in each school would be exceedingly wasteful and undoubtedly less efficient. The best administrator has to be the knowledgeable and experienced teacher promoted to principal on the basis of demonstrated ability, not merely as a teacher but as an administrator.

Clarification of the intended meaning of the terms used here may be useful.

"When I use a word," Humpty Dumpty said in rather scornful tone, "it means just what I choose it to mean — neither more than less!"
"The question is," said Alice, "whether you can make words mean so many different things."
"The question is," said Humpty Dumpty, "which is to be master — that's all."

"Manager" and "administrator" are being used here in their dictionary sense to designate persons accountable for the operation and direction of an institution. The terms, as used, concern themselves with numerous functions, some, at the lower end, having to do with plant and equipment and the keeping of records and the filing of routine reports, although these duties more often fall to the lot of a junior administrator than to that of a manager. The vital managerial functions, in the sense used here, involve planning, organizing, directing, and evaluating the work of others. A manager, by skill and consultation, builds the organizational climate and provides the managerial leadership to enable and encourage his staff to make their most effective and satisfying contribution to the institutional purposes.

In some of the literature filed with the Committee of Inquiry the terms "management" and "administration" seem to connote only the performance of menial maintenance tasks, such as requisitioning classroom supplies and overseeing vending and other equipment.[5] "Educational Leadership" and other similar expressions seem, in some of the literature, to be substitute terms for what, in another milieu, would be viewed as the major managerial function — staffing, organizing, coaching, consulting, deciding, planning, and evaluating results.

Semantics aside, the Principal's role as leader in his school demands even further discussion on two counts.

First, the title "leader" seems to imply to some the role of consensus taker, a form of management by consent of the managed. The leader leads only after the followers have pointed the direction. A practical response to this point of view is provided in the late Douglas McGregor's essay "Leadership". McGregor, as he points out, shared with other academic colleagues illusions similar to the above on the role of a leader. He revised his ideas during his sojourn as President of Antioch College. Here, in his words, is the conviction that developed out of his personal managerial experience:

"I believed, for example, that a leader could operate successfully as a kind of adviser to his organization. I thought I could avoid being a 'boss'. Unconsciously, I suspect, I hoped to duck the unpleasant necessity of making difficult decisions, of taking the responsibility for one course of action among many uncertain alternatives, of making mistakes and taking the consequences. I thought that maybe I could operate so that everyone would like me — that 'good human relations' would elimate all discord and disagreement.

I could not have been more wrong. It took a couple of years, but I finally began to realize that a leader cannot avoid the exercise of authority any more than he can avoid responsibility for what happens to his organization. In fact, it is a major function of the top executive to take on his own shoulders the responsibility for resolving the uncertainties that are always involved in important decisions. Moreover, since no important decision ever pleases everyone in the organization, he must also absorb the displeasure, and sometimes severe hostility, of those who would have taken a different course."[6]

The Principal, if he is to be a Leader must, as McGregor and other successful leaders have discovered, exercise this judicial role. But as Leader he has a second, equally vital role — consulting with his teaching staff. This part of his leadership role involves listening to, anticipating and sensing his staff's ideas, accepting their counsel, hearing and acting on their teaching needs. The really vital ingredient in this first-line consultative process is, of course, the ability to give effect to meritorious and useful teacher ideas and suggestions.

Joint consultation is dealt with as another subject in this Report. Two points will suffice here. First, the most serious criticism heard during this Inquiry was the ineffectiveness of existing consultative methods. Secondly, it must be clear that regardless of how effective formal joint consultative machinery might be, it can only be a supplementary adjunct to the essential, daily, continuous dialogue between individual teachers and the school authority — and this can only be when there is a person representing the authority in the school, namely the Principal of the school.

Needless to say if the Principal is relegated to the role of messenger, by either the teachers or the authority, consultation at this level will be ineffectual — as indeed many teachers alleged it now to be.

For continuous consultation to work in practice the Principal must have the confidence of the trustees; he must be their representative in the school with clearly delegated authority to speak on their behalf and commit them to courses of action — provided only that such courses of action are within their policy guidelines.

This is the first and most important step in instituting effectual consultation. Only the school principal, as a designated trustee representative, can bring it into play.

If, as seems to be the case now in some schools, the Principal is viewed merely as a "head teacher", or, as "first among equals" he may have the confidence of his "peers" and be well able to speak for them. But he will have no one to speak to! For the span of control of the trustees' administrative staff is too broad to permit daily communication, on a broad range of subjects, with each school principal. In any event, the true and historic role of the school principal is daily and effective consultation of the school principal is daily and effective consultation and, as stated earlier, it would be wasteful, unnecessary, as well as less effective, to inject someone else into each school to perform a function rightfully and traditionally that of the school principal.

This would ordinarily be the appropriate point to review the opposing views on the role of the school principal and his proper place in the joint negotiating process. But it hardly seems necessary to weigh all the different elements since certain essentials, me judice, seem irrefutable and all persuasive:

1) *The school, as other institutions, must have a head, a leader accountable to the top authority, in this case the public, through the public's elected and appointed officials, for the operation of the school;*

2) *Leadership, whether it be educational leadership of teachers in a school, or of professors in a college, or of professionals, or non-professionals, in any institution or enterprise, is a multi-functional role. It involves, inter alia, recruitment of staff, assignment of staff duties, counselling individuals, consulting individuals and groups, and generally deciding and implementing those courses of action likely to achieve the purposes for which the institution was designed. Not the least of these functions is the appraisal of individual and collective results, and the taking of corrective action, as indicated.*

3) *Identified in academic circles as "educational leadership", this responsibility in business or commerce is called "management". The functional elements and skills are one and the same. Distinguishing the institutional leadership role of the school principal from the leadership role of managers of other institutions on the basis of title alone leaves one in an intellectual cul-de-sac.*

4) *Effective leadership requires the confidence and respect of one's superiors, along with the delegated authority to speak on their behalf, within policy guidelines, of course. The school principal, it follows, to be an effective educational leader, must be able to speak with authority, and reflect in certain terms the purposes and objectives of higher authority and be able, at the same time, to give proper support and effect to the ideas and educational needs of his teaching staff.*

Seized with these accountabilities — in part to the trustees for the management of the school and in part to his teaching staff for giving voice and effect to their creative educational ideas — the school principal must be empowered to represent the authorities in his school. He must be part of the Trustee Management Team. He must be their Chief Executive Officer in the school.

In this perspective the school principal's proper role in the joint negotiation process seems clear. Moskow adds some emphasis to the conclusion and through him Herb Northrup reveals a new and interesting facet:

"The possible effect of including supervisors and classroom teachers in one organization were identified by Northrup sixteen years ago. 'The typical group includes both supervisors and regular teachers. The effect is to restrain the latter from completely free expression and thus to lessen the effectiveness of collective bargaining for those of the group who are undoubtedly most in need of its economic benefits.'*

Because relatively few organizations composed of both classroom teachers and administrators have conducted negotiations with local school boards, it is too early to tell if an all-inclusive organization can effectively represent the teachers.*

In any case, if such an organization acts as bargaining agent, certain safeguards will have to be established. For example, administrators may have to be prevented from holding elected offices, from chairing important committees, and possibly even from voting on some motions. Obviously no administrator* could be allowed to represent the organization in negotiations, if he were required to perform the same task for the school board."[7] (Emphasis added).*

The recommendation, therefore, of this Part II of Chapter 10, is that the school principal be accorded official managerial status, and be designated as chief executive officer of his school, accountable to the public through its elected and appointed officials for the management of the school and the achievement of its predetermined educational objectives.

There remains the question of membership of principals in the Ontario Teachers' Federation or, in the case of secondary schools, in its adjunct, The Ontario Secondary School Headmasters' Council. As noted at the outset, the principals have much to contribute to the original and professional role of the Ontario Teachers' Federation, namely by aiding in improving and raising the professional competence of the Province's teachers. But, once the Ontario Teachers' Federation involves itself, as it now has, in the collective bargaining area, it raises a major conflict of interest between the Principal's function as Headmaster and his obligation as an Ontario Teachers' Federation member bound by Ontario Teachers' Federation policy.

*The titles "supervisor" or "administrator" are used throughout this volume to include, inter alia, School Principals and Vice-Principals.

A major thrust of this Report, implied in other chapters, is a diminished role for the Ontario Teachers' Federation, and its affiliates, in collective negotiations, in the interests of conducting negotiations at the local level (where everyone seems to agree they can be most effective and productive, provided reasonable safeguards are written into the system) and in the interests of freeing the Ontario Teachers' Federation to concentrate on its much needed professional activities.*

If this comes to pass, the conflict between the principal's responsibility for the recommendation and implementation of the trustees' policies and his obligation as an Ontario Teachers' Federation member will disappear. If it does not come to pass and the Ontario Teachers' Federation continues to involve itself in negotiations by policy formulation or other measures, the school principals should be released from the statutory compulsory membership requirement. Nothing in this recommendation would prevent the school principals from forming an organization of their own, or from entering into joint negotiations with their Board of Trustees, if by majority vote they choose to do so.

Addendum:

During the period of this Inquiry, teachers, in a very small number of jurisdictions, instituted self-styled "work-to-rule" as a device to put pressure on the school authorities. The Committee's Report, it has been suggested, would not be complete without reference to these occurrences. This is an appropriate place for such reference since, as will be shown, the school principal's role, his commission in the school system, is the key to locking the door on this undesirable and disruptive technique.

The expression "work-to-rule" is a misnomer: its use implies legality. Any action by a group of employees which limits the performance of their assigned or normal work is considered a "strike" or a "slowdown".

Section 3 of the teacher's individual contract of employment states:

"The Teacher agrees to be diligent and faithful in his duties during the period of his employment, and to perform such duties and teach such subjects as the Board may assign under the Acts and regulations administered by the Minister."

In a properly administered school, in which the school principal has been granted clearly delegated authority, as recommended above, he will, as agent of the Board, assign duties, following due consultation, including so-called "extra-curricular" duties to each of the teachers in his jurisdiction. "Work-to-rule" would then include the performance of these duties and give no cause for concern.

References

1. Ontario Teachers' Federation submission to the Committee of Inquiry, Appendix V.

2. Moskow: *Teachers and Unions;* University of Pennsylvania, 1966, page 148.

3. Ibid: page 163.

4. Carlyle: *Miscellaneous Essays.*

5. There are several sources for this observation. The best is probably the Canadian Education Association's recently published booklet, *The Man in the Middle,* and in particular the chapter: "Business Manager or Educational Leader?".

6. *Leadership and Motivation, Essays of Douglas McGregor;* Edited by Warren G. Bennis and Edgar H. Schein with the collaboration of Caroline McGregor: The M.I.T. Press, 1966, Chapter 5, page 67.

7. Michael H. Moskow, op. cit. page 142.

*Mr. Onyschuk does not agree in full with this comment, and his comments may be found on page 63.

Chapter 11

The Individual Contract and the Collective Agreement

In the course of the Committee of Inquiry's deliberations, the Committee has had to consider the legal relationship of the collective agreement and the individual teacher's contract set forth in Regulation 208 under The Department of Education Act. The question of some importance that arises is: what are the duties and obligations of both parties to the two agreements? Is the collective agreement incorporated into the individual teacher's contract? Can an individual teacher sue, or be sued, for a breach of the collective agreement?

There is a dearth of law decided upon the point. If the permanent teacher's contract contained a specific provision referring to the collective agreement, then the position of the collective agreement (and the teacher's right to enforce the collective agreement) would stand on a much better footing. A series of cases in the United Kingdom have established that terms of collective agreements between trade unions and employers, incorporated into the service contract of individual employees by *express* reference, can be enforced at the suit of an individual employee.[1]

The fact, however, that the permanent teacher's contract does not refer specifically to any collective agreement, places the individual teacher in a poor position legally. It has been held that the terms of a collective agreement cannot be incorporated into an individual service contract by implication, even though the evidence showed that the employer has applied the collective agreement in dealing with his employees: In *Young* vs. *Canadian Northern Railway Company* (1931) A.C. 83 it was decided by the Privy Council that a workman who cannot show privity by representation either authorized or adopted, or by statute cannot claim it, has no right to call for the enforcement of the collective bargain. Lord Russell of Killowen stated at page 89:

"It (the agreement) *appears to their Lordships to be intended merely to operate as an agreement between a body of employers and a labour organization by which the employers undertake that as regards their workmen, certain rules beneficial to the workmen shall be observed. By itself it constitutes no contract between any individual employee and the company which employs him. If an employer refuses to observe the rules, the effective sequel would be, not an action by any employee, . . . but the calling of a strike until the grievance was remedied".*

The foregoing case appears not to have been followed in two of the three Canadian cases following it dealing with the same issue. In a recent decision,[2] the British Columbia Supreme Court considered a collective agreement between a laundry company and the union representing its drivers. The collective agreement provided that the union and each employee covenanted and agreed with the company that for six months after the termination of the employment of any employee, the employee would not solicit patronage on anyone's behalf from any customers of the Plaintiff company. The court held that the individual contract of the employee included by implication the restrictive covenant found in the collective agreement. In the course of delivering judgement, Mr. Justice Dryer after discussing the *Young* vs. *C.N.R.* case, stated:

"Further, I am by no means satisfied that collective agreements cannot be enforced, in the absence of an express agreement to the contrary, by and against the employees covered by them. The legislation mentioned above (the B.C. Labour Relations Act) provides for certification of trade unions upon proof of representation by the majority of the employees concerned . . . This was not the case in 1931. It may have been appropriate then to leave a non-member with no remedy as is suggested by the Judicial Committee of the Privy Council at page 650 D.L.R. of their judgment, but it would not be so today. Since the enactment of such legislation, collective agreements have come to be accepted as being entered into by a union on behalf, not only of itself, but also of the employees it represents. This community of obligation is recognized in Sections 20 and 21 of the Labour Relations Act, R.S.B.C. 1960, c. 205, but also exists quite independently of specific legislative provisions, and if, as agent for employees represented by it, a union commits them to do or refrain from doing any act after their employment is terminated, the law should enforce performance."[3]

The decision in the *Nelsons Laundries* case was followed in *Re Prince Rupert Fishermen's Co-operative Association and United Fisherman and Allied Workers' Union* (1968) 66 W.W.R. 43, another case before the British Columbia Supreme Court.

However, in an older case but one much more directly on point, in 1944 the Manitoba Court of Appeal had before it a dispute between a teacher and its school board. The case is *Bryson* vs. *Glenlawn School District* (1944) 3 D.L.R. 636. In this case, a teacher entered into a contract of hiring with a school board in the form prescribed by the Public Schools Act; her contract provided that the employment might be terminated by notice given at least one month prior to December 31st or June 30th. A rule of a local of a Teachers' Federation submitted to the school board provided that a teacher who was employed for at least three months should not be dismissed without being given an opportunity of having her case heard and investigated. This rule had not been formally adopted by the Board, and therefore the Court of Appeal held that the rule did not assist the dismissed teacher. However, in the course of the

judgement, Mr. Justice Bergman, J.A., went on to consider the question of the effect that the rule might have even if it had been adopted by the school board and stated:

"I would, however, add a further ground, which was not raised or argued, and hold that, even if there had been a formal concluded agreement between the Manitoba Teachers' Federation and the Defendant School District, incorporating Rule 11, it would not have advanced the Plaintiff's case. It seems to me that the Federation was at most the recognized collective bargaining agent of the teachers to "negotiate schedules of working conditions with the Board" (Rule 2). Agreement arrived at between the Federation and the Board cannot be enforced by an individual teacher against the board for lack of privity. In my opinion this matter is conclusive by the decision of the Privy Council in Young vs. C.N.R. (1931) A.C. 83. I have the greatest sympathy for the Plaintiff, because in Young vs. C.N.R. I unsuccessfully advanced very much the same argument as Mr. MacInnes has advanced to this court. I know that it is cold comfort to be told that agreements arrived at through collective bargaining rests in the realm of good faith, because, when trouble does arise, it is because good faith is lacking on the part of one of the parties to the so-called agreement."

On balance, the decision in the *Nelsons Laundries Limited* case is a more reasonable decision in the light of today's labour relations legislation and the relationships between employer and employee. However, the *Nelsons Laundries* case is the decision of a single Judge, followed only in *Re Prince Rupert* by another single Judge. Against it, it has the Privy Council's decision in the *Young* vs. *C.N.R.* case, and also the Court of Appeal of Manitoba in *Bryson* vs. *Glenlawn School District* (even though the statement by Bergman, J.A., is obiter dicta).

Therefore, it follows that the individual teacher's contract as presently worded is at the very least ambiguous and uncertain insofar as its interrelationship with the collective agreement is concerned, and probably lacks the necessary language to incorporate the collective agreement and to make the collective agreement legally enforceable by the individual teacher. Recent United Kingdom cases all involve statutory provisions which now provide that collective agreement shall be incorporated into the individual contracts, and this is another indication that the existing state of the law, barring legislative enactment or clear wording in the contract, is inadequate.

This Committee therefore recommends that the form of individual teacher's contract prescribed by the regulations to the Department of Education Act be amended to specifically refer to, and incorporate into the contract, the terms of the professional agreement, and further that a statutory provision to the same effect be inserted into paragraph 11. of sub-section (1) of Section 12. of the Department of Education Act.

References

1. *Camden Exhibition and Display Limited* vs. Lynott (1966) 1 Q.B. 555; *Rookes* vs. *Barnard* (1964) A.C. 1129; *National Coal Board* vs. *Galley* (1958) 1 W.L.R. 16.

2. *Nelsons Laundries Limited* vs. *Manning* (1965) 51 D.L.R. 2nd 537.

3. Ibid, at p. 542.

Chapter 12
Conclusions and Recommendations

The Committee of Inquiry Into Negotiation Procedures Concerning Elementary and Secondary Schools of Ontario, in its deliberations aimed at creating a model for teacher-school-board negotiations and relationships in Ontario, has been conscious of a number of important factors. The Committee has been aware of the fact that teachers on the one hand and school board trustees on the other hand in the Province of Ontario as a whole have similar thoughts and beliefs on the majority of points pertaining to the present study, as revealed by the briefs and oral presentations made to the Committee by both teachers and trustees and by their associations. A significant objective of the Committee, therefore, has been to make recommendations which will be mutually acceptable to both sides.

The Committee of Inquiry was appointed by the Lieutenant Governor-in-Council of the Province of Ontario, on the advice of the Minister of Education, to serve the public interest. The Committee's main function, then, has been to design a model for relationships between teachers and school boards which will ensure that the school system is able to operate in an orderly and efficient manner, in a spirit of mutual trust and understanding, and in the interests of the children and young people who are its only raison d'être. At the same time, it is the sincere hope of the members of the Committee that their recommendations will be in the best interests also of the teachers and school board trustees.

The Committee of Inquiry realizes, then, that its recommendations may not satisfy everyone. Naturally there have been sharp differences of opinion on some points brought forward in the briefs and at the public hearings. Some groups and individuals have taken views diametrically opposed to those of the associations to which they belong. The Committee is confident, however, that the model presented in Chapters 8 and 9 and in the following sections is capable of dispelling the major points of division.

It was Socrates, the man who professed not be wise but to seek wisdom, who said: "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially". The Committee of Inquiry has been guided by these precepts.

The Rationale

As stated in the Preface, the Committee of Inquiry has taken as its basic concept that conflict in teacher-school-board relationships should be, and can be, virtually eliminated. While the process of negotiations does imply the establishment of adversary positions, it does not follow that these positions can be resolved only by conflict, hostility, sanction or force, and that teacher-school-board negotiations cannot be successfully consummated by the application of goodwill, reasonableness, responsibility, and mutual trust. Teacher-school-board negotiations can be carried on around (rather than across) the table, by teachers and trustees who are engaged in the same high purpose of providing the best possible educational opportunities for every child and student under their care. In essence, teachers want to receive their fair share of economic resources, and no more, and trustees, as representatives of the public, are generally desirous of providing that fair share. When both teachers and trustees sitting around the table have in their hands identical and reliable data, discussions emanate from one and the same base and calculation of the fair share can be a relatively simple exercise.

The Committee of Inquiry is confident that the understanding, trust and accurate discussion of monetary matters referred to in the previous paragraph is possible, and is not merely idealism, because teacher-school-board relationships are different from the situations in other areas. Early in its study and deliberations, the Committee was unanimous that collective bargaining procedures followed in the private sector should have no place in teacher-school-board professional negotiations in Ontario. In its visits to other jurisdictions, where collective bargaining procedures for teachers have been established by law or have developed through practice, the Committee was often disappointed, indeed sometimes saddened, to observe hard-line adversary positions which cheapened the relationship between teachers and trustees who are both engaged in the same responsible enterprise.

The history of relationships between teachers and school boards in Ontario, the Preface to this Report stated, has been characterized by truly remarkable rapport, which is the ground upon which further development must be built. The Committee of Inquiry, when describing the teacher-trustee relationships in Ontario to individuals in some other jurisdictions preparatory to seeking their ideas, had the unique experience of observing incredulity on the faces and in the words of these individuals who wondered what contributions the systems they represented could make to one which had had a more satisfactory history over the years.

It is for these reasons that the Committee of Inquiry believes that refinements can be made in the present teacher-trustee relationships in Ontario to make it satisfying, effective, and distinctive.

The Negotiating Entity
Both teacher and trustee groups were almost unanimous, in their briefs and oral presentations to the Committee of Inquiry, in stating that negotiations should be conducted at the local level. The Committee has accepted the viewpoint that local teachers and trustees better understand the local situation, that grass-roots involvement is essential for the establishment of healthy rapport, and that local decision-making is democracy working at its best.

It follows, then, that the teacher negotiating entity should consist of the teachers employed by the local board.

The Committee of Inquiry deliberately makes this statement in a general manner. It is evident to members of the Committee that negotiations would be less time-consuming and less demanding for trustees and their administrative staffs if the teacher negotiating entity consisted of *all* teachers employed by a local board. It is recognized, however, that teachers are divided into groups which have distinctive characteristics. Nevertheless, as the distinctive characteristics disappear and in particular as the acquisition of a university degree by more and more teachers who have not required one in the past wipes out the main point of difference, it seems logical that teacher negotiating entities which include all teachers in a jurisdiction will naturally evolve.

A number of presentations suggested a regional approach to negotiating. The Committee of Inquiry feels that, in parts of the Province where all parties mutually agree and where geography and population are facilitating factors, there is merit in conducting negotiations on a regional basis. Indeed the precedent has been set in some areas.

It has been proposed by some that negotiations should be conducted on a provincial basis. The Committee of Inquiry has rejected this idea at this point in time because of the arguments in favour of local negotiations. But it is difficult to project one's thinking too far into the future in times of extraordinarily rapid change. Over the next ten or fifteen or twenty years the history of teacher-school-board negotiations might reveal the futility of numerous and similar negotiating sessions and might indicate the desirability of compact, concentrated province-wide negotiations. If that day dawns, as indeed it might, both teacher and trustee associations should be forewarned to avoid the pitfalls which now exist in jurisdictions, for example in England and Wales, where large-scale bargaining is carried on. In particular, the apparent need for arranging proportional representation for associations on both employer and employee sides of negotiating panels should not result in a body so large that it cannot become anything more than a debating society which is then compelled through frustration to delegate formulation of policy and of decisions to small working parties or to executive officers on each side.

RECOMMENDATION 1
That the negotiating entities consist on the one side of the teachers employed by a local school board, and on the other side of the local board of trustees.

RECOMMENDATION 2
That, where the parties agree by mutual consent, negotiations be conducted on a regional basis.

Composition of the Negotiating Entity
The Committee of Inquiry is of the opinion that the negotiating entity should consist of all certificated personnel except supervisory officials. In effect, the latter term includes all employees in that part of a board's organization commonly referred to as "the administrative staff".*

The Committee of Inquiry has had to decide whether to recommend the inclusion of principals and vice-principals in the teacher negotiating entity or to recommend their exclusion. The majority of written opinion offered to the Committee favoured their inclusion. Virtually all teachers and teacher associations, including the Ontario Secondary School Headmasters' Council, made strong cases for having principals and vice-principals in the negotiating entity. A number of trustees and trustee groups supported their inclusion, though some asked for their exclusion. The members of the Committee of Inquiry have had to weigh these submissions, however, against discussions in the Public Hearings and elsewhere, both in Ontario and in other jurisdictions, not only with educational personnel but also with experienced individuals in the private sector who presented strong arguments against inclusion of principals and vice-principals in the negotiating entity.

The "pro's" and "con's" have been dealt with at some length in Chapter 10. The majority opinion is that principals be included in the teacher negotiating entity if that is their desire, but that, on a majority vote of principals in a local jurisdiction, principals be granted the right to form their own negotiating entity.

The minority opinion is not only that principals be granted the right to form their own negotiating entity but also that the school principal be accorded official managerial status, and be designated as chief executive officer of his school, accountable to the public through its elected and appointed officials for the management of the school.

*Committee Member Hemsworth would include school principals in the supervisory or administrative staff, would accord them official managerial status, and would designate them as chief executive officers in their schools.

In other words, the main difference of opinion centres around interpretation of who is included in the term "supervisory or administrative staff".

The Committee are agreed that vice-principals are confidants and peers of the teachers, and hence belong in the teacher negotiating entity.

Recommendation 3
That the negotiating entity include all certificated personnel except the supervisory officers of the school board.*

Recommendation 4
That, on a majority vote, the principals in a local jurisdiction form their own negotiating entity.

The Negotiating Authority
Almost a natural corollary of the preceding sections is the statement that the negotiating authority for teachers should be a representative committee of the local staff.

At this point, the Committee of Inquiry comes face to face with the role played by the various affiliates of the Ontario Teachers' Federation in the negotiation process in the past. The Committee firmly believes and strongly advises that the Ontario Teachers' Federation and its affiliates must devote even more effort than they have given over the years to the professional development of their members, a field that requires much sowing and that can bear rich harvest. **The Committee's study of the history of the teachers' federations has convinced them that the great needs in this field led to the foundings of the associations in the first place and to the passing of The Teaching Profession Act in 1944.

It appears to the Committee that the affiliates of the Federation were drawn into the area of negotiations because of the absence of an adequate procedure and hence somewhat against their will. The model being recommended by the Committee in this Report removes the necessity of Federation involvement. The teacher negotiating authority at the local level will be supplied with accurate information, the same data as that provided to the school board negotiating authority. The teacher negotiating entity may request, at any time after negotiations have started, to have an impasse referred to the Adjudicative Tribunal which will give a finding based upon the merits and with the help of the identical data which were used by both parties. The Ontario Teachers' Federation is to have joint control over, and responsibility for, the Professional Research Bureau which will collect and disseminate the pertinent data. The advisory function of the Ontario Teachers' Federation and its affiliates, therefore, remains in this important aspect of the model. But interference from the provincial level at the local level, except in an advisory role in extraordinary cases, would ruin the type of professional negotiations and the model which the Committee of Inquiry is earnestly recommending.

The Committee of Inquiry is not prepared to make any specific recommendations as to who should negotiate for the school board. The traditional procedure has been the appointment by the trustees of a sub-committee of themselves to negotiate with a teachers' committee. A few school boards in Ontario have been delegating duties in the negotiation process, especially in initial stages, to administrative personnel such as the Director of Education (or Superintendent of Separate Schools, as the case may be) or to one or more of his assistants.

Although the Committee of Inquiry is not making a recommendation that supervisory and administrative staff act as delegated authorities of the school board trustees in formal negotiations with the teachers, the members of the Committee feel that serious consideration should be given to such delegation of responsibility in negotiating procedures. In addition to the fact that trustees rarely can devote the amount of time required to do the task of negotiations thoroughly, they often do not possess the specific skills needed in the delicate operation. If an official of the school board's administrative staff is assigned the specific duty of negotiating on the board's behalf, subject only to final approval of the board, but, of course, guided by the board's initial instructions, this person can become an expert in the field through study, attendance at conferences, and experience. Of greater importance, if the person is carefully selected by the board, he can establish sound liaison and rapport with the teacher's representatives on a continuing basis from year to year.

*Committee Member Hemsworth would include school principals in the supervisory or administrative staff, would accord them official managerial status, and would designate them as chief executive officers in their schools.

**Mr. Onyschuk does not agree in full with this comment, and his comments may be found on page 63.

Recommendation 5
That the negotiating authority for teachers be a representative committee of the local teaching staff employed by the school board, and that the negotiating authority for the school board be a committee of trustees or such other persons as the trustees shall determine.

The Scope of Negotiations
One point on which there has been a wide divergence of opinion has been the question of the matters which should properly be subject to negotiation. In general, teachers have said that salaries, fringe benefits and conditions of work should be negotiable. At the other end of the scale, trustees have said that only monetary matters should be open to negotiation and that professional duties involve trustees' privileges and responsibilities in connection with which they, as elected representatives of the people, must be the ultimate decision-makers.

The Committee of Inquiry understands the desire of teachers to be totally involved in the educational process and agrees with them that those engaged directly in the challenging day-by-day classroom enterprise have the expertise to know and to suggest the conditions under which teachers can work and students can learn to the best advantage. In a previous chapter of this report, the Committee has discussed the consultative process, and as a result will make recommendations in a succeeding section designed to utilize the knowledge of teachers in the setting of educational policy.

The Committee recognizes, on the other hand, that the position taken by school boards on trustees' privileges and responsibilities is not only legally sound under the schools acts, but also administratively essential, and concludes that, therefore, only the amount of "compensation" paid to teachers should come within the scope of negotiations.* The Committee was disenchanted with the net result, that is the collective agreement, in many of the jurisdictions where there has been no limit placed upon the matters subject to negotiation. In a number of these jurisdictions, the collective agreement has a surfeit of details many of which, in the Committee's opinion, should be determined at another level or by another process.

Nevertheless, the Committee is obligated to define what it means by "compensation". The glossary of terms for Professional Negotiations listed in Appendix A indicates that compensation means "financial benefit, either direct or indirect". In addition to actual monetary reward or salary, this definition gives rather wide scope to the interpretation of "fringe benefits". The latter naturally include consideration of such items as cumulative sick leave, sabbatical leave, retirement gratuities, absence on compassionate grounds, maternity leave, hospitalization and medical premiums, and group insurance premiums. They may include also consideration of any leave without pay which guarantees the teacher a position on his return, because that agreement gives an indirect financial benefit to the teacher in that it offers security of tenure perhaps in a time of teacher over-suppy. The Committee of Inquiry does not intend to attempt to compose a comprehensive list of items that may be regarded as compensation. It does want to reiterate that, if an item has direct or indirect financial benefit to the teacher, it is compensation and is, therefore, negotiable.

Recommendation 6
That the scope of negotiations be limited to the amount of compensation paid to teachers.

The Negotiation Process
The Committee of Inquiry is confident that the majority of negotiations, as in the past, will be consummated at the local level. If a difference of opinion occurs, or differences of opinion occur, one or both sides may have to seek Third Party Assistance to reach agreement. Third Party Assistance, whether rendered by parent provincial associations or by other sources, should be of an advisory nature only. For final resolution of a dispute, the Committee of Inquiry is recommending referral to an Adjudicative Tribunal, the establishment of which has been discussed in Chapter 8. The Committee is of the opinion that the second step, Third Party Assistance, should be invoked only in rare and exceptional cases at the wish of either or both of the negotiating entities.*

The Committee of Inquiry has come to the conclusion, as discussed in Chapter 8, that a leading cause of disagreement in the past has been the lack of reliable and accurate data. In order to overcome this weakness in the negotiation process, the Committee of Inquiry is recommending the establishment of a Professional Research Bureau which will collect, collate and disseminate material to both parties on a regular basis. As both sides in negotiations would have identical data, then, the finalization of an agreement at the local level should be greatly facilitated, and, if an impasse has to be referred to the Adjudicative Tribunal, the latter will be able to weigh the claims of each side against the set of data upon which each side has made its claim. As mentioned in Chapter 8, the Professional Research Bureau

*Mr. Onyschuk's comments on this and the following paragraphs are contained on pages 61-62.

*Mr. Onyschuk does not agree in full with this comment, and his comments may be found on page 63.

should be under the direction of a Joint Committee on Research composed of ten members — five teachers and five trustees. It need not be a big operation; it would have many sources of information already established upon which it can call. The Committee recommends that the Joint Committee on Research begin with a permanent staff composed of a Research Director assisted by a secretarial assistant, and further that the Bureau be financed through the budget of the Ontario Ministry of Education.

As noted above, the Committee of Inquiry recommends the establishment of an Adjudicative Tribunal for solution of persistent disagreements. The Committee further recommends that the Adjudicative Tribunal be a permanent body consisting of a chairman, one or more vice-chairmen and a number of a part-time members, appointed by the Lieutenant Governor-in-Council on the advice of the Minister of Education and financed through the medium of the Ministry of Education's budget. Members would sit as boards of one to resolve disputes, but the chairman, in the course of his duties, would convene periodic meetings of the entire Tribunal for the setting of consistent policy.

Recommendation 7
That a Professional Research Bureau be established to collect, collate and disseminate pertinent data on a regular basis to both parties and to the Adjudicative Tribunal hereafter recommended; and

That such Professional Research Bureau be under the direction of a Joint Committee on Research composed of ten members, five teacher representatives and five trustee representatives selected respectively by the Ontario Teachers' Federation and the Ontario School Trustees' Council; and

That the chairmanship alternate between teacher and trustee representatives year by year; and

That the initial permanent staff be composed of a research director and a secretarial assistant; and further

That the Professional Research Bureau be financed through the budget of the Ontario Ministry of Education.

Recommendation 8
That a persistent disagreement between the parties at to any of the items that are subject to negotiations be referred to an adjudicator who is a member of a Permanent Adjudicative Tribunal consisting of a chairman, one or more vice-chairmen and a number of part-time members, appointed by the Lieutenant Governor-in-Council on the advice of the Minister of Education, and financed by the Government of the Province of Ontario through the budget of the Ministry of Education; and further that the decision of the adjudicator be final and binding on both parties.

Consultation
Consultation is a two-way process — employer to employee and employee to employer. It requires, then, two lines of communication — one proceeding from the top echelon of management to the employee at the bottom of the ladder, and one proceeding from the employee upwards through the organization to the top echelon of management.

The Committee of Inquiry is satisfied that the first line of communication, that is from the top down, is fairly satisfactory in the educational structure in Ontario, though undoubtedly much improvement is possible. By various means such as the printed word, oral communication and visitation, the Ministry of Education and local school boards keep teachers informed about policy decisions, new developments and anticipated changes. The Committee would like to draw attention to a few important points in this connection, however. In the first place, the "grapevine" should be eliminated if at all possible because it breeds distortions. Secondly, the printed word may be effective if it is well written, but it is cold and impersonal and it precludes dialogue. The best method of communication, of course, is face-to-face briefing which makes possible both dissemination of information and reaction to it. In the interests of good public relations, of good rapport between teachers and officials, and of an informed organization from top to bottom, trustees and school board officials would be wise, in the opinion of the Committee of Inquiry, to use the latter method of communication more often and indeed as often as possible.

The Committee of Inquiry has concluded, however, that the other line of communication, that is from the grass-roots upwards or from the teacher to the school board and the Ministry of Education, has not been operating satisfactorily. In the briefs and oral discussions with the Committee, teachers have expressed their deep-felt need to be able to make a greater impact upon educational policy. The Committee sympathizes with the attitude of teachers on this point. It has expressed the view earlier in this Report that teachers know better than anyone else what actually goes on in a classroom and that, therefore, their collective voice should be listened to carefully before policy affecting the classroom atmosphere is formulated. Although many school boards have set up teacher-trustee committees which have met periodically and have discussed educational policy in general and professional duties in particular, these committees have been generally ineffective. They have provided some sort of sounding board for teachers, but they have not had direct influence upon school board policy because there has been no requirement or no machinery for putting forth recommendations for the consideration of the school board. The Committee of Inquiry has several recommendations to remedy this situation.

A key recommendation is a simple, but a significant one. There should be no restrictions placed upon matters open to consultation. This point has been dealt with carefully in Chapter 9. Either a teacher or a trustee should be able to have placed upon an agenda any item he deems important, provided, or course, that it is pertinent to the educational process.

The other recommendations in this connection are documented in detail in Chapter 9 also. As pointed out in that chapter, in order to inject life and effectiveness into teacher-trustee committees, the Committee of Inquiry recommends that the establishment of a School Board Advisory Committee under Part IX of the Schools Administration Act be made obligatory and that a further clause in this Part be added to require this committee to meet at least six times in a calendar year. The Committee recommends also that the composition of the School Board Advisory Committee as set down in the Act be amended and that the members be four trustees, four teachers, and the persons appointed under subsections (2) and (3) of Section 85. of the Act. It should be noted that a School Board Advisory Committee has the power to make reports and recommendations to the school board on any matter pertaining to the schools under the jurisdiction of the board and that the school board must consider any report or recommendation submitted to it by the committee and cannot refuse its approval without having given the committee an opportunity to be heard by the board and without giving reasons for its rejection of the Committee's report or recommendations. The Committee of Inquiry is making other recommendations designed to clarify and reinforce the machinery of operation. The Committee of Inquiry is confident that the revitalized School Board Advisory Committee will give teachers a vehicle by which they can make their contribution to the setting of educational policy at school board level and by which they can state their views about professional duties with the sure expectation that the school board will at least consider them. At the same time, the school board does not abrogate its duties in regard to trustees' privileges and responsibilities since it retains the ultimate decision.

The Committee of Inquiry recognizes, however, that, with the present size of most school board jurisdictions, representation by four teachers for a county or a large municipality is not adequate in itself to give teachers the voice they want and deserve. Beneath the School Board Advisory Committee there must be further organization to ensure that the views of the teachers, and not just those of four representatives, reach the school board level.

The Committee of Inquiry hopes that the vast majority of teacher suggestions will emanate from the staffs of individual schools. It hopes that the principal will fulfill one of his main roles, that of educational leader, in the total consultative process and will guide his staff to creditable conclusions which will be forwarded to the next level in the process described in the following paragraph.

Since the area under the authority of a school board is usually widespread and since the school population is usually large, there is need for consultative machinery between the school level and the school board level. The Committee of Inquiry is recommending that school boards establish families of schools, each family having an Area Advisory Committee, under the chairmanship of an area superintendent or similar official, composed of teacher representatives from schools in the family, one or two principals, and four parents or citizens. The chairman of the Area Advisory Committee would determine the number of meetings in a year in accordance with the number of submissions received from school staffs.

The line of communication upward, therefore, is quite clear — from the school staff to the area advisory committee, to the school board advisory committee, to the school board. Submissions by school staffs to area advisory committees and by area advisory committees to school board advisory committees would be in writing but might be complemented, on invitation of the receiving body, by oral testimony.

The machinery established to communicate from the top down and that established to communicate from the bottom up, it should be noted, are separate and quite distinct lines of communication. At first thought, it might be felt that unnecessary, superfluous and contradictory systems are being suggested, but, if one considers the matter thoughtfully and carefully, he will realize that each line of communication has its specific purpose. The aim for establishing a line of communication from the top down is to ensure that information, including policy statements, reaches the grass-roots and all intermediate levels between the top and bottom of the organizational structure. The aim for establishing a line of communication from the bottom up is to ensure that ideas and requests generated at the grass-roots and at all intermediate levels between the bottom and the top do in fact reach the top.

Nevertheless, although it is essential to have two separate lines of communication for two distinct purposes, the Committee of Inquiry does not want to give the impression, which would be incongruous, that creative ideas and suggestions are generated only at the grass-roots level and must proceed in a lock-step progression through the line of communication recommended in preceding paragraphs. Creative ideas might be, and often should be, generated by the area advisory committee and referred back to school staffs for discussion and approval; they might be generated by the school board advisory committee and referred back

to school staffs through the area advisory committee; they might even be generated by the school board and referred back to school staffs through the school board advisory committee which channels them to the area advisory committee for submission to the teaching staffs. Indeed, the school system which develops this consultative process to its full potential will have continual and continuous dialogue, a veritable storehouse of ideas (good and bad perhaps), involvement by all who wish to have their say, and, despite all the apparent ferment of opinion that is bound to result, an orderly procedure for both offering and receiving it. The Committee of Inquiry cannot refrain, at this point, from stating its belief that the school system referred to in the previous sentence would undoubtedly be a vigorous, imaginative and stimulating one, characterized in particular by a vital and relevant educational atmosphere.

The remaining link in the chain, as pointed out in Chapter 9, is the framework for consultation with the Ontario Ministry of Education and in particular with the Minister of Education. The Committee of Inquiry is well aware of the fact that various associations meet from time to time with the Minister of Education and his senior officials. While the Committee endorses this technique of consultation, at the same time the Committee asserts it is inadequate at the level which many would consider to be the highest; in particular, it does not provide for adequate grass-roots input and it does not provide for multilateral exchanges of viewpoints. The Committee of Inquiry is recommending, therefore, that there be established a Standing Consultative Conference to be convened at least once a year by the Minister of Education and to be chaired by him. The composition, organization, and modus operandi of the Standing Consultative Conference has been described in Chapter 9.

The Committee of Inquiry has dealt at some length with this matter of consultation because the members of the Committee consider it to be the key factor in developing healthy relationships between the various groups engaged in the educational process and in establishing a good educational climate.

Recommendation 9
That the establishment of the School Board Advisory Committee under Part IX of the Schools Administration Act be made obligatory.

Recommendation 10
That sections 85. and 86. of Part IX of the Schools Administration Act be amended:

1) to provide that the School Board Advisory Committee shall consist of

a) four members of the school board appointed by the school board;

b) four teachers employed by the board appointed by the teachers in the employ of the board;

c) two persons appointed under subsections (2) and (3) of section 85.;

2) to provide that the chairmanship shall alternate from year to year between the teacher and the trustee members; and

3) to include a clause requiring this committee to meet at least six times in a calendar year.

Recommendation 11
That the School Board Advisory Committee establish a number of Area Advisory Committees, being Sub-Committees of the School Board Advisory Committee, representing families of schools, and that each Area Committee shall function under the chairmanship of an area superintendent or similar official, and shall consist of

a) not more than two school principals;

b) not more than eight teachers, representing a cross section of responsibilities and schools;

c) and not more than four representatives of the Federation of Catholic Parent-Teacher Associations or the Home and School Council in the same proportion as provided in section 85.

Recommendation 12
That the Area Advisory Committee receive submissions from school staffs in its area and forward these submissions to the School Board Advisory Committee with its own recommendations or comments.

Recommendation 13
That the teaching staff of a school, under the leadership of the principal, formulate resolutions concerned with educational policy and professional duties, and forward these to the appropriate Area Advisory Committee.

Recommendation 14
That the School Board Advisory Committee established such other Sub-Committees as it may deem advisable for the consideration of any specific matter dealing with educational policy or professional duties, as now provided in the Schools Administration Act.

Recommendation 15
That no restrictions be placed on matters open to consultation, except insofar as matters pertaining to individual personnel problems, and that the provisions of Section 88. (2) of the Schools Administration Act be amended accordingly.

Recommendation 16
That the provisions of Section 88. (3) of the Schools Administration Act be amended to provide that the school board shall not reject any recommendation of the School Board Advisory Committee without giving the committee an opportunity to be heard and further without giving reasons for the rejection.

Recommendation 17
That all other necessary amendments to Part IX of the Schools Administration Act be made where necessary to give effect to the recommendations of Chapter 9 of the Committee of Inquiry's report.

Recommendation 18
That the Minister of Education convene and chair at least once a year a Standing Consultative Conference, that this body have two permanent honorary secretaries chosen respectively by the Ontario Teachers' Federation and by the Ontario School Trustees' Council, and that the composition of the Standing Consultative Committee be along the lines suggested in this report.

The Agreement
In review, then, the Committee of Inquiry has unanimously recommended: (1) that the negotiating entities consist of the teachers employed by a local school board and of the local board of trustees, (2) that the school board's supervisory staff* be excluded from the negotiating entity, and principals be permitted to elect to form their own negotiating entity, (3) that the negotiating authority for the teachers be a representative committee of the local staff and for the school board a committee of trustees or such other persons as the trustees shall determine, (4) that the scope of negotiations include teachers' compensation, (5) that the negotiation process contain two stages: local level negotiations and referral to an adjudicator who is a member of a permanent Adjudicative Tribunal, with possible advice between the stages by Third Party Assistance in rare and exceptional cases,** (6) that a Profesisonal Research Bureau be established to provide helpful and accurate material at all three stages, and (7) that the involvement of teachers in determining educational policy and professional duties be provided for in an effective consultative system.

There remains for consideration the agreement which is the end product of the first six stages outlined above.

It is taken for granted that the parties will negotiate a written agreement properly signed and sealed. It will be necessary to have legislation legalizing the professional agreement between teachers and school boards and the Committee of Inquiry will recommend this in a succeeding section. The form of the individual teacher's contract, as explained in Chapter 11, will have to be amended to specifically refer to, and incorporate into the contract, the terms of the professional agreement between the parties and amendments to the professional agreement from time to time; if this step is taken, the professional agreement and the individual contract will be compatible.

The length of the agreement should be left to the discretion of the parties involved, but the minimum length should be one year from date of signing. The yearly contract has been the pattern in the past. A considerable number of briefs proposed that the duration of an agreement should be two years, generally on the basis that the longer period would give some respite from the exigencies of negotiation sessions. No doubt, however, if the parties were to agree to a two-year duration for an agreement, they would consider carefully the relationship between the two-year duration and the two-year term of office of school board members. There was minimal support in the briefs received for any length of time beyond two years.

Recommendation 19
That the form of the individual teacher's contract prescribed by the regulations to the Department of Education Act be amended to specifically refer to, and incorporate into the contract, the terms of the professional agreement, and further that a statutory provision to the same effect be inserted into paragraph 11. of subsection (1) of Section 12. of the Department of Education Act.

Recommendation 20
That the length of the agreement be left to the discretion of the parties involved, but that the minimum length be one year from date of signing.

Time Limits
Many persons, who would be involved in the negotiation process recommended in this Report, might feel that the Committee of Inquiry should recommend time limits for the conclusion of successive steps in the process. The Committee has concluded, however, that time limits should be as flexible as possible and that they should be left to the discretion of the parties involved.*

*Committee Member Hemsworth would include school principals in the supervisory staff.

**Mr. Onyschuk does not agree in full with this comment, and his comments may be found on page 63.

*Mr. Onyschuk's Minority Report on this point may be found at page 61.

Should the parties fail to agree in joint negotiations, either of them can force a resolution by referring the impasse to the Adjudicative Tribunal. Should they mutually agree to delay referral, there would be no cause for outside concern. There is an important principle here. It is one thing to require parties to negotiate when one party wishes; it is quite another thing to force them to conclude a joint agreement when neither of them, for whatever their reasons, wishes to do so. It is easy to fall into the trap of losing sight of the purpose of joint negotiations and joint agreements, and pushing the process as though it were an end in itself.

Recommendation 21
That time limits for the conclusion of successive steps in the negotiation process be left to the discretion of the parties involved.

Legislation
Some of the twenty-one recommendations made to this point in the Report include recommendations for amendments to the legislation. One other piece of enabling legislation is needed as well. The Committee of Inquiry is of the opinion that legislation should be kept to a minimum and that it should be relatively flexible in the sense that it should not establish a rigid, lock-step system of negotiations. The Committee recommends, therefore, only one further amendment to existing legislation.

Recommendation 22
That a paragraph 12. be added to Section 33. of the Schools Administration Act to make it a duty of a school board to enter into negotiations on compensation with the teachers in the board's employ when requested to do so by a majority of the teachers and to conclude a professional agreement with these teachers, so that the said paragraph 12. of Section 33. of the Schools Administration Act would read as follows:

"Every board shall . . .

12. *enter into negotiations on compensation with teachers in its employ, when requested to do so by a majority of the said teachers, and conclude a professional agreement."*

Minority Report of Mr. B. S. Onyschuk

I Time Limits

It is the view of this member of the Committee that time limits, to the extent that it is possible, should be made as flexible as can be and should be left to the discretion of the parties involved. However, there is one time limit that must, in the public interest, be imposed upon the parties to the negotiations, and that is the date at which, if negotiations have not been successfully completed, those issues which are unresolved must be referred to the Adjudicative Tribunal.

There are a number of reasons why this time limit must be imposed:

1) If there is no time limit by which time unresolved issues are referred to the Adjudicative Tribunal, then negotiations between the parties will become protracted and will tend to drag on for months and indeed perhaps years. Even though either party may refer the matter to the Adjudicative Tribunal in our report, they may not choose to do so for their own reasons, and therefore there will be no agreement, with the resulting discord, friction and ill will between the parties and in the schools. One need only note that in Alberta, there have been numerous instances where no contracts have been reached for up to three years at a time.

2) Sanctions such as work to rule, etc., will probably begin to play an important part if there is no time limit and if negotiations are protracted, and each party will try to "wear" the other party out.

3) The public interest demands some finality to these matters, and if the parties have had a reasonable time in which to negotiate but have not reached agreement, the matter should go to adjudication.

4) Teachers are entitled to know what their salaries are to be for the following year in order that they may seek employment in school boards without the uncertainty of not knowing what they are to be paid for the following year. It is therefore important that an award of the Adjudicative Tribunal be handed down well before May 31st, the resignation date in each year.

5) School boards should know with certainty their budgetary requirements and their financial position for the next school year as soon as possible, and therefore a limit should be imposed.

6) In setting a date on which the dispute has to be referred to adjudication both sides are pressed indirectly to resolve their differences and to actively pursue further negotiations.

For these reasons it is the recommendation of this Member that if the parties to the negotiations have not finalized a professional agreement on or before April 1st of the year on which the existing agreement expires (in the case of a school board operating on a school year basis), then the persistent disagreement should be automatically referred to the Adjudicative Tribunal. In the case of a school board operating on a calendar year basis, the operative date should be October 1st.

The Adjudicative Tribunal should be required to bring down its decision on or before May 15th and November 15th respectively. It is for that reason that the dates of April 1st and October 1st are chosen: the Adjudicative Tribunal must have sufficient time in order to hear the persistent disagreement and make a binding determination well in advance of May 31st and November 30th respectively, the dates on which a teacher may tender his resignation.

The aforementioned time limits will ensure in the public interest that a professional agreement is successfully concluded within a reasonable time and without recourse to protracted negotiations with all the disruptive consequences that usually flow therefrom.

II The Scope of Negotiations

On page 55 of this report the Committee discusses the issue of the scope of negotiations. Further references to the scope of negotiations are found on pages 37 and 41 of the report. It is the opinion of the Chairman and Mr. Hemsworth that the scope of negotiations should be limited to items of "compensation" as that word is defined by the report at page 55. The definition set forth on that page, in the opinion of this Member, is not clear enough and the peripheral comments made on pages 37, 41 and 55 further concern this Member in that some readers of this Report may be confused by semantics, and the use of the word "compensation" in the many contexts in which it is found in the report. The fact that the other two Members of the Committee did not agree to a further elaboration of the definition of the word "compensation" leaves this Member to conclude that his views may be divergent from those of the majority of the Committee.

It is the unequivocal and firm view and recommendation of this Member that the scope of negotiations should extend to salaries, fringe benefits and those related conditions of employment which confer either a direct or indirect monetary benefit. In this regard, this Member endorses the last sentence of the paragraph found on page 55 immediately preceding Recommendation 6 which states: "It (the Committee) does want to reiterate that, if an item has direct or indirect financial benefit to the teacher, it is "compensation" and is, therefore, negotiable."

It is furthermore of a concern of this Member that persons reading the first three paragraphs of the section of the Report dealing with the scope of negotiations may improperly interpret what this Member considers to be the recommendation of the Committee. In general, teachers have said that salaries, fringe benefits, conditions of work related to salary, and "conditions of work for quality teaching" should be negotiable with school boards. Semantics being what they are, teachers have attempted, by using the last-mentioned phrase to sweep into negotiations matters which are properly matters of "educational policy", as that phrase has been used in Chapter 9 of this Committee's report. By "educational policy", are meant matters relating to the size of the classroom, the pupil/teacher ratio, matters of curriculum, the development of teaching aids, etc. These matters of course affect the conditions of employment under which teachers work, but they are items which involve trustees' privileges and responsibilities (or management rights, if you will) and should therefore be dealt with in the consultative process outlined in Chapter 9 of this report and not at the negotiating table.

On the other side of the coin, however, "educational policy" is not everything other than salaries, as was indicated in many of the briefs and oral submissions of various trustee groups. Again, because semantics and words are so important in this matter, it must be made abundantly clear that fringe benefits and conditions of employement with direct or indirect financial benefit are *not* matters of "educational policy", as they appear to be viewed by some of these trustee groups. It is obviously apparent that the position taken by these groups was merely a bargaining posture for the purpose of negotiations with their teachers.

Those conditions of employment which confer a direct or indirect monetary benefit, whether they be called "fringe benefits", or "compensation", or otherwise, should clearly be negotiable. If it were otherwise then the Province of Ontario would be in the anomalous position of having restricted the scope of negotiations of its teachers more severely than any other province in Canada and most jurisdictions outside Canada.

To illustrate, reference need only be made to the study prepared by J. Douglas Muir for the Task Force on Labour Relations (the Woods Report).[1] In Alberta teachers negotiate rates of pay, hours of work and "other terms or conditions of employment".[2] In Manitoba teachers negotiate "terms and conditions of employment of teachers that include provisions with reference to salaries".[3] In New Brunswick "terms and conditions of employment and related matters" are negotiable.[4] In Nova Scotia, salaries and "conditions of employment" are negotiated.[5]

In the earlier portion of that same paragraph, however, certain items are enumerated and interpreted as "fringe benefits". The list is not all inclusive, and was not intended to be such, and yet words are very important and definitions must be carefully drawn when one is considering as important an item as the scope of negotiations. The Committee should have added to the list the words: "and other related conditions of employment with either direct or indirect monetary benefit" in order that no one interpret the paragraph or that sentence as intending to limit either the word "compensation", or the words "fringe benefits" too restrictively.

Quebec has permitted the parties to negotiate on almost any subject. Saskatchewan increased the scope of negotiations in 1968 to include salaries, allowances and "other matters related to salaries".[6] The only province to attempt to restrict the scope of subjects that may be negotiated is the Province of British Columbia which has restricted negotiations to "salaries and bonuses", but the consensus in the province is that almost anything can be negotiated under the term "bonus"[7].

In the private sector, but in analogous circumstances, the Federal Government of Canada has proposed amending the Labour act to permit unions to negotiate aspects of technology and innovation. And, of course, private sector employees have traditionally had the right to negotiate conditions of work in all its aspects. It would be a curious result indeed if anyone were therefore to recommend restricting the scope of negotiations for Ontario teachers to matters of salaries and fringe benefits only.

It is therefore important to clearly demarcate the scope of negotiations. Negotiations should include matters of salaries, fringe benefits and those related conditions of employment bestowing either direct or indirect monetary benefits. On the other hand, matters of educational policy such as classroom size, pupil/teacher ratios, the development of curriculum, teaching aids and the like are all matters which should lie outside the scope of negotiations and in the area of joint consultation.

It is the recommendation therefore of this Member of the Committee that the scope of negotiations be clearly defined by legislation to include "salaries, fringe benefits, and related conditions of employment with either direct or indirect monetary benefit".

1. Task Force on Labour Relations, Study Number 21, *Collective Bargaining by Canadian Public School Teachers*
2. *Alberta Labour Act,* Section 55 (c) (ii)
3. *The Public Schools Act,* Part XVIII (363) (1) (e)
4. *Public Service Labour Relations Act,* c. 88 (1) (h)
5. *Nova Scotia Teachers' Union Act,* Section 6A (1)
6. *Teacher Salary Negotiations Act,* c. 75, 2 (h) (vi)
7. *Public Schools Act,* Section 135 (a) and (b)

III Exhibit "C1" and Exhibit "C2"

On page 10 of this report the comment is made that the statistical information in Appendix "C" indicates that teachers' salaries have only kept pace with the wealth of the economy and financial gains of workers in other sectors. The Table which is cited in support of this statement is Exhibit "C2" which shows teachers' average salaries as an index of personal income per capita. The use of this Table is misleading in that the Table does not show the population figures for the Province of Ontario for the years set out therein. Personal income per capita is a function of total income earned by every man, woman and child in Ontario, divided by the population of Ontario for that year. It varies, therefore, either up or down depending upon changes in population. The use of the index is not therefore a useful guide without population data.

On the other hand, Exhibits "C1" and "C3" do indicate that teacher salaries have increased in advance of increases in the average weekly wage. In Exhibit "C1", the average weekly wage in 1947 was $37.16, or $1,932.32 per annum, compared to average teacher and principal salaries of $1,656.00. The same figures for the year 1969 showed the average weekly wage at $121.52, or $6,319.04 per annum compared to an average teacher's salary of $6,883.00 in that year. Teacher salaries had caught up to, and outstripped, average salaries in the rest of the economy. Exhibit "C3" further indicates that teachers' salaries increased at a faster rate than the average weekly wage, but somewhat behind the average construction wage rate.

In the result the statistical data does not support the statement on page 10.

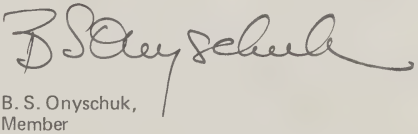
IV Third Party Assistance

In the view of this Member, the Provincial teacher affiliates and the Ontario School Trustees' Council have on numerous occasions in the past successfully acted as mediators and conciliators in disputes between local teacher groups and local school boards. They have brought, for the most part, cooler heads to bear on difficult negotiation circumstances and have succeeded in bringing the two sides together in resolving important disagreements. It would be fair to comment, that with the exception of the Toronto impasse of 1970, it has been the parent associations on both sides that have been able to defuse and settle the potentially dangerous deadlocks that have occurred in the province, and the deadlocks that have persisted and escalated in a number of acute cases have been those in which the parent associations had not been called in on either side of the issue. For this reason this Member does not agree with the comments made in various parts of this Report that outside assistance by these bodies should be discouraged "except in rare circumstances".

This Committee Member believes that the local parties to the professional negotiations should have the right to use such conciliators or mediators as they feel may be required in assisting them to reach agreement. In the past they have turned to their teacher affiliates or the Trustees' Council for assistance with measurable success in most cases. Whilst any such assistance, below the adjudicative level, should be unofficial and off the record, it should not be limited to "rare circumstances" as is denoted in the majority report of this Committee.

It is simplistic to believe, as is stated on page 21 of this report that the inserting of a third party conciliator or mediator would undermine the negotiation process this Committee has proposed. Any negotiation process involves "pulling and tugging" at respective positions and at the facts, and the imposition of a third party will not appreciably change this fact of life. On the contrary, the fact that both parent associations, at the Provincial level, will be Members of the Professional Research Bureau will allow them to assist the local school board or the local teachers in more correctly interpreting data and information made available to them. This should therefore not be used as an argument for removing the Provincial affiliates on both sides from the negotiation process if their assistance is requested.

When one considers the history of teacher-trustee negotiations in the Province of Ontario, and the fact that a voluntary recognition and a voluntary negotiation procedure has been established through the intervention of the teacher affiliates and the Trustees' Council, there is no reason why the Provincial bodies should not be allowed to participate in local negotiations when requested to do so, nor why their achievements in the past in bringing both parties in the negotiations to agreement should not be recognized.



B. S. Onyschuk,
Member

Appendix A: A Glossary of Joint Negotiations and Joint Consultations Terminology (with comparisons drawn from labour relations' terminology and jargon).

Professional Terminology	Labour Relations Terminology
Additional Compensation (with either direct or indirect monetary benefit)	Fringe Benefits
Adjudicator	Arbitrator
Adjudication	Arbitration
Adjudicative Tribunal	Arbitration Board
Committee	Committee
Compensation (financial benefit either direct or indirect)	Compensation
Complainant	Grievor
Complaint	Grievance
Complaint Determination	Grievance Procedure
Consultations	Adversary Proceedings
Finding	Award
"In Good Faith" (Implicit in professional negotiations, and consequently its use is redundant and superfluous).	"In Good Faith"
Mandatory Professional Membership	Union Shop
Negotiating Authority	Bargaining Agency
Negotiating Entity	Bargaining Unit
Negotiating Privileges	Bargaining Rights
Partial Withdrawal of Services	Work to Rule
Professional Duties	Conditions of Work
Professional Fee Deduction — Mandatory	Check Off — Compulsory
Professional Fee Deduction — Voluntary	Check Off — Voluntary
Professional Negotiations	Collective Bargaining
Professional Research	Fact Finding
Professional Research Bureau	Pay Research Bureau
Recognition	Certification
Scope of Negotiations	Scope of Bargaining
Terms of Engagement	Conditions of Employment
Third Party Assistance	Conciliation, Mediation
Tribunal	Board
Trustees' Responsibilities	Management Rights
Variety of Negotiating Techniques	Arsenal of Weapons

Appendix B: Memorandum of Law

I Legal Aspects of the Right to Strike

Issue: 1) Is a strike at common law a legal activity, and if so under what conditions and with what restrictions;

2) Has the common law position been changed by the Criminal Code provisions relating to conspiracies and restraint of trade;

3) Is the common law position modified by the individual contract between a teacher and his school board, which contract provides for automatic renewal of the contract unless proper notice of termination of employment is given in advance?

Conclusions:

1) A strike is not illegal at common law, provided that it is waged or threatened in furtherance of a legitimate economic interest of the persons striking, and provided that no tort (such as procured breach of contract, assault, defamation, etc.) and no criminal act is committed by the person striking, and provided that the strike is not for the purpose of injuring the employer in his business undertaking: *Allen* vs. *Flood* (1898) A.C. 1; *Quinn* vs. *Leathem* (1901) A.C. 495; *Sorrell* vs. *Smith* (1925) A.C. 700. The right to strike, as can be seen from the above limitations, is narrowly circumscribed by the fact that no breach of either the civil or criminal law can be countenanced, and any such breach vitiates the legality of the strike itself. It is, nevertheless, legal.

2) The Canadian Criminal Code, in Section 410 and 411, does not change the common law right to strike, but only defines the limits within which a strike is a legal weapon.

3) The individual contract existing between a school teacher and the school board by *whom* he is employed provides that at two periods of the year, namely December 31st and August 31st, the teacher may terminate his employment with the school board, provided that proper notice is given to the school board (being 30 days' notice in the former case, and 90 days (May 31st) notice in the latter). A mass resignation, whether counselled or otherwise, on either of the two dates set in the individual contract would operate as a legal strike, provided that the pre-conditions established at common law were met: that is, that there was no conspiracy to injure the employer in his business, and that there was no criminal act nor civil wrong committed. On other than these two specified dates, however, there is a contractual obligation (whether in writing or oral) to work for an employer, and a strike on any day other than the 31st of December or the 31st of August (provided proper notice is given) would be illegal since it would be a breach of contract by the very terms of the contract. Anyone counselling a school teacher to strike on any but these two dates would be inducing a breach of contract.

Reasons:

The statement of the law as to the right to strike, barring unlawful means, is found in the famous trilogy of *Allen* vs. *Flood* (1898) A.C. 1; *Quinn* vs. *Leathem* (1901) A.C. 495, and *Sorrell* vs. *Smith* (1925) A.C. 700. However, even as early as 1891, the House of Lords in the case of *Mogul Steamship Company* vs. *McGregor* (1902) A.C. 25 stated, per Lord Bramwell (at page 47):

"There is one thing that is to be decisive. I have always said that a combination of workmen, an agreement among them to cease work except for higher wages, and a strike in consequence, was lawful at common law; perhaps not enforceable inter se, but not indictable."

In *Allen* vs. *Flood,* iron workers on a ship objected to the employer ship-building from employing the Plaintiffs as shipwrights upon the ground that the Plaintiffs had infringed trade union rules while working for another employer. An official of the union found that the iron workers were likely to walk off work unless the Plaintiffs were discharged, and he so informed the employers, who at the end of the day discharged the Plaintiffs. This action by the employers was not a breach of contract because the engagement of the Plaintiffs was from day to day, and terminated at the end of each day. The house of Lords held that the Plaintiff had no action against the Defendant official of the union for he had committed no illegal act nor induced the employers to commit a breach of contract. In the course of the judgement, Lord Herschell stated (at page 129):

"It would have been perfectly lawful for all the iron workers to leave their employment and not to accept a subsequent engagement to work in the company of the Plaintiffs. At all events, I cannot doubt that this would have been so. I cannot doubt either that the Appellant or the authorities of the union would equally have acted within his or their rights if he or they had "called the men out". They were members of the union. It was for them to determine whether they would become so or not, and whether they would follow or not follow instructions of authorities, though no doubt if they had refused to obey any instructions which under the rules of the union it was competent for the authorities to give they might have lost the benefits they derived from membership. It is not for your Lordships to express an opinion on the policy of trade unions, membership of which may undoubtedly influence the action of those who have joined them. They are now recognized by law; there are combinations of employers as well as of employed. The members of these unions, of whichever class they are composed, act in the interests of their class. If they resort to unlawful acts they may be indicted or sued. If they do not resort to unlawful acts they are entitled to further their interests in the manner which seems to them best, and most likely to be effectual."

And at page 138:

"I do not doubt that everyone has a right to pursue his trade or employment without "molestation" or "obstruction" if those terms are used to imply some act in itself wrongful. This is only a branch of a much wider proposition, namely that everyone has a right to do any lawful act he pleases without molestation or obstruction. If it be intended to assert that an act not otherwise wrongful always becomes so if it interferes with another's trade or employment, and needs to be excused or justified, I say that such a proposition in my opinion has no solid foundation in reason to rest upon. A man's right not to work or not to pursue a particular trade or calling, or where or with whom he will work is a law of right of precisely the same nature, and entitled to just the same protection, as a man's right to trade or work. They are but examples of that

wider right of which I have already spoken. That wider right embraces also the right of free speech. A man has a right to say what he pleases, to induce, to advise, to exhort, to command, provided he does not slander or deceive or commit any other of the wrongs known to the law of which speech may be the medium."

The decision of the House of Lords in *Quinn* vs. *Leathem* (1901) A.C. 495 put the decision in *Allen* vs. *Flood* in its proper context. The Plaintiff, a butcher, employed non-union men and refused to dismiss them; the Defendants, officers of a butcher's trade union, induced certain retail butchers to cease dealing with the Plaintiff by threatening to call out their employees and also induced one of the Plaintiff's servants to leave him in breach of contract and others not to continue in his employment. The House of Lords held that the Defendants had acted maliciously and that the Plaintiff had a good cause of action in that the Defendants had obstructed and interfered with him by illegal means and had acted by conspiracy, not for the purpose of advancing their own interests but for the sole purpose of injuring the Plaintiff in his trade. Lord Shand, at page 512, stated:

"In that case (Allen vs. Flood) I expressed my opinion that while combination of different persons in pursuit of a trade object was lawful, although resulting in such injury to others as may be caused by legitimate competition in labour, yet that combination for no such object, but in pursuit merely of a malicious purpose to injure another, would be clearly unlawful; and having considered the arguments in this case, my opinion has only been confirmed."

And Lord Lindley at page 539-540:

"The cardinal point of distinction between such cases (the Mogul Steamship Company case and Allen vs. Flood) and the present is that in them, although damage was intentionally inflicted on the Plaintiffs, no one's right was infringed — no wrongful act was committed; whilst in the present case the coercion of the Plaintiff's customers and servants, and of the Plaintiff through them, was an infringement of their liberty as well as his, and was wrongful both to them and also to him, as I have already endeavoured to show. Intentional damage which arises from the mere exercise of the rights of many is not, I apprehend, actionable by our law as now settled. To hold the contrary would be unduly to restrict the liberty of one set of persons in order to uphold the liberty of another set. According to our law, competition, with all its drawbacks, not only between individuals, but between Associations, and between them and individuals, is permissible, provided nobody's rights are infringed. The law is the same for all persons, whatever their callings: It applies to masters as well as to men; the proviso, however, is all important, and it also applies to both, and limits the rights of those who combine to lock-out as well as the rights of those who strike but coercion by threats, open or disguised, not only of bodily harm but of serious annoyance and damage, is prima facie, at all events, a wrong inflicted on the persons coerced."

The third case, *Sorrell* vs. *Smith* (1925) A.C. 700 restated the principle already established in the above cases. In this case, the Plaintiff, a news-agent, had been obtaining his papers from a wholesale agent named Ritchie and then, on the request of the union, transferred his trade to Watson. The Defendants (a Committee representing newspaper proprietors), in order to compel the Plaintiff to return to Ritchie, threatened to discontinue supplying newspapers, and to a firm which supplied him, unless Watson gave up supplying the Plaintiff. Watson acceded to the threat. The House of Lords held that the Plaintiff had no cause of action against the Defendant who had caused no breach of contract. Although they had combined in an action which would have injured the Plaintiff, had he not submitted to their demand, the Defendant's purpose had been to forward or defend their own trade and not to injure the Plaintiff in his trade. The Defendants had not used unlawful means in pursuing their purpose, the threat of withdrawing supplies being merely an intimation of an intention to do something which they had a legal right to do.

The House of Lords decision in *Allen* vs. *Flood* was transferred and embodied into Canadian Law first in *Perreault* vs. *Gauthier* (1898) 28 S.C.R. 241, where workmen, in carrying out the regulations of a trade union forbidding them to work at a trade in company with non-union workmen, without threats, violence, intimidation or other illegal means refused to work with a non-union workman and walked off their jobs. It was held that the principle enunciated by the House of Lords in Allen vs. Flood was to be followed, and the action was therefore dismissed.

By 1908, the Privy Council, in *Jose* vs. *Metallic Roofing* (1908) A.C. 514 rejected the notion that strikes were per se illegal and held that the Trial Judge in that case had misdirected the jury in telling them that:

"The calling out of the men on strike by resolutions of the union, if those resolutions were the cause of the strike, was an actionable wrong, without regard to motive, and without regard to the conspiracy alleged."

None the less, strikes have over the years been found to be illegal or actionable with a persistent constancy. The usual grounds of liability has been (i) conspiracy to injure the employer in his business, and (ii) inducing breach of contract. This latter subject has been canvassed in an article by Professor H. W. Arthurs, in Volume 38 of the Canadian Bar Review (1960) at page 346, where at page 349 the author states:

"This much, at least, appears from the dicta in the cases: Absent a nominate tort (e.g. assault, procuring breach, defamation), absent a criminal act, absent an intention to injure, strikes might lawfully be waged or threatened in furtherance of some legitimate economic interest. Those interests sometimes considered legitimate included higher wages (Vulcan Iron Works vs. Winnipeg Lodge 174, (1911)

21 Man. R. 4473), a union shop (Local 1562 U.M.W.A. vs. Williams and Rees (1919), 59 S.C.R. 240), the non-employment of persons with whom the union did not wish to work (Perreault vs. Gauthier, (1898) 28 S.C.R. 241), and assistance to fellow unionists engaged in some legitimate dispute (Krug Furniture vs. Berlin etc. Woodworkers, (1903) 5 O.L.R. 463). Political strikes were beyond the pale (Rex vs. Russell, (1920) 1 W.W.R. 624), as were gratuitous demonstrations of force (Local 1562 U.M.W.A. vs. Williams and Rees, Supra), or strikes calculated to injure an employer in the carrying on of his business, by interfering with his employees or customers, or jurisdictional strikes."

The above quotation from the article accurately states the common law, absent legislation.

The Criminal Code in Section 424 and 425 (R.S.C. 1970, ch. 34) does not change the common law.

Section 424 reads as follows:

"1) *A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to do any unlawful act in restraint of trade.*

2) *The purposes of a trade union are not, by reason only that they are in restraint of trade, unlawful within the meaning of subsection (1)."*

Section 425 reads as follows:

"1) *No person shall be convicted of the offence of conspiracy by reason only that he*

a) *refuses to work with a workman or for an employer, or*

b) *does an act or causes any act to be done for the purpose of a trade combination, unless such act is an offence expressly punishable by law.*

2) *In this section, 'trade combination' means any combination between masters, workmen or other persons for the purpose of regulating or altering the relations between masters or workmen, or the conduct of a master or workman or in respect of his business, employment or contract of employment of service."*

Furthermore, Section 4 of the Combines Investigation Act (R.S.O. 1970, ch. 23), being the old Section 411 of the Criminal Code, states as follows:

"Nothing in this act shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees."

This brings us then to a consideration of the individual contract betwen the teacher and his school board.

The individual teacher's contract is prescribed by Section 1 of the regulations under the Department of Education Act. Furthermore, by Section 16. (1) of the Schools Administration Act each contract of employment between a board and a teacher is deemed to include the terms and conditions contained in the form of contract prescribed under the Department of Education Act, and in the event that there is no written contract, Section 16. (1) deems that the oral agreement includes the terms and conditions as set out in the forms.

The individual teacher's contract is an agreement which does not have a termination date in it. It states that the Board agrees to employ the teacher commencing with a date written into the contract at a mutually agreed upon yearly salary (which yearly salary is subject to such changes as may be mutually agreed upon between the parties). By Section 9 (Section 8 of previous printing) of the agreement prescribed by the regulations, the agreement remains in force until terminated in accordance with any Act administered by the Minister of Education or the regulations thereunder. Regulation 208 unde;the Department of Education Act, Revised Regulations of Ontario 1970, Section 6, states that an individual teacher's agreement may be terminated on the 31st day of December in any year provided written notice is given on or before the 30th day of November, or on the 31st day of August in any year provided that written notice is given on or before the 31st day of May of that year. The same provisions are also written into the individual teacher's agreement, and are found in Section 6 thereof. The agreement may also be terminated at any time by the mutual consent of the parties.

It is abundantly clear from the above that any strike, or withdrawal of services, during the term of the teacher's contract would be a fundamental breach of contract, and specifically a breach of Article 3 of the contract which states:

"The teacher agrees to be diligent and faithful in his duties during the period of his employment, and to perform such duties and teach such subjects as the board may assign under the Act and regulations administered by the Minister."

On the basis of *Quinn* vs. *Leathem,* Supra, therefore any strike during the course of the agreement would be illegal.

However, the fact that the individual teacher's contract can be terminated on the two dates specified in the contract (that is the 31st day of December and the 31st day of August of any year) gives each teacher the right to cancel or withdraw his services on the dates specified. Since this right is a legal right, it affords the opportunity to a group of teachers, or indeed a whole school of teachers to give notice of termination of their contract and thereafter to terminate their contract, and in effect to "strike". Such a "strike" would not be a breach of contract, and furthermore the

counselling to "strike" would not be a breach of contract because the contract could be legally terminated on the two days in question: See *Allen* vs. *Flood,* Supra.

In effect, the individual teacher's contract operates in the same manner as any oral or written contract of any workman, at common law (barring legislative prohibition of the strike), as for example the workmen in the Allen vs. Flood case. The only distinction is that the teacher's contract obligates the teacher to work for longer periods of time than does the ordinary workman's contract (which may employ the workman on a day-to-day or week-to-week basis). Therefore, the time at which a strike can legally be taken without causing a breach of contract between the employer and the employed is deferred in the case of the teacher's contract to two periods of time in the year, whereas the ordinary workman at common law would not operate under similar limitations. The result, however, is the same, and barring any criminal or civil tort which may occur during the course of the strike, the individual contract itself is not a bar to the strike.

References

Halsbury's, *the Laws of England,* 3rd Edition

Canadian Abridgment, 2nd Edition

Crysler, A.C., *Labour Relations and Precedents in Canada*

Crysler, A.C., *Restraint of Trade and Labour,* Canadian Book on Labour Law.

H.W. Arthurs, *Tort Liability for Strikes in Canada: Some Problems of Judicial Workmanship,* Canadian Bar Review (1960) Volume 38, page 346.

II The Legal Position of the Individual Teacher Contract and the Collective Agreement

ISSUE: What is the legal position of a teacher employed under an individual teacher's contract as prescribed in the Regulations to the Department of Education Act: Can he claim the benefits of the collective agreement negotiated between the school board and the (teacher's) association? Is the collective agreement incorporated by reference into the individual teacher's contract either as an implied or an express term of the individual contract?

CONCLUSIONS: There is a dirth of law decided upon the point. If the permanent teacher's contract had a specific provision contained in it referring to the collective agreement or memorandum of agreement negotiated, then the position of the collective agreement (and the teacher's right to enforce the collective agreement) would stand on a much better footing: A series of cases in the United Kingdom have established that terms of collective agreements between trade unions and employers where incorporated into the service contract of individual employees by express reference can be enforced at the suit of the individual employee: *Camden Exhibition and Display Limited* vs. *Lynott* (1966) 1 Q.B. 555; *Rookes* vs. *Barnard* (1964) A.C. 1129; *National Coal Board* vs. *Galley* (1958) 1 W.L.R. 16.

The fact, however, that the permanent teacher's contract does not refer specifically to any collective agreement, or to any benefits or obligations that may arise under a collective agreement places the individual teacher in a poor position. It has been held in a Canadian case that the terms of a collective agreement could not be incorporated into an individual service contract by implication, even though the evidence showed that the employer had applied the collective agreement in dealing with the employees: *Young* vs. *Canadian Northern Railway,* (1931) A.C. 83. Recent single Judge decisions have not followed this Privy Council decision, and have allowed terms of collective agreements to be incorporated by implication into individual employee contracts: *Nelsons Laundries Limited* vs. *Manning* (1965) 51 D.L.R. 2nd 537; *Re Prince Rupert Fishermen's Co-operative Association,* (1968) 66 W.W.R. 43. However, in the case of *Bryson* vs. *Glenlawn School District* (1944) 3 D.L.R. 636, the Manitoba Court of Appeal dealt specifically with the instance of a teacher's individual contract and a collective agreement negotiated by the Manitoba Teacher's Federation and held that the Plaintiff teacher could not succeed in her action against the school board on the basis of a contract. Bergman, J.A. in his reasons for dismissing the action, stated on page 640:

"I would, however, add a further ground, which was not raised or argued, and hold that, even if there had been a formal concluded agreement between the Manitoba Teachers' Federation and the Defendent School District, incorporating Rule 11, it would not have advanced the Plaintiff's case. It seems to me that the Federation was at most the recognized collective bargaining agent of the teachers to "negotiate schedules of working conditions with the Board" (Rule 2). Agreement arrived at between the Federation and the Board cannot be enforced by an individual teacher against the board for lack of privity. In my opinion this matter is conclusive by the decision of the Privy Council in Young vs. C.N.R. (1931) A.C. 83. I have the greatest sympathy for the Plaintiff, because in Young vs. C.N.R. I unsuccessfully advanced very much the same argument as Mr. MacInnes has advanced to this court. I know that it is cold comfort to be told that agreements arrived at through collective bargaining rests in the realm of good faith, because, when trouble does arise, it is because good faith is lacking on the part of one of the parties to the so-called agreement."

Despite the decision in the *Bryson* case, it would appear to be the better and more enlightened view, expressed in *Nelsons Laundries Limited,* that individuals should have the benefit of enforcing the collective agreements arrived at between the employees as a group and their employer. Still the authority on the other side is such that no clear statement of the law can be made. Therefore, it follows that the individual teacher's contract as presently worded is at the very least ambiguous and uncertain insofar as its interrelationship with the collective agreement is concerned, and probably lacks the necessary language to incorporate the collective agreement and to make the collective agreement legally enforceable by the individual

teacher. Recent United Kingdom cases all involve statutory provisions which now provide that collective agreement shall be incorporated into the individual contracts, and this is another indication that the existing state of the law, barring legislative enactment or clear wording in the contract, is inadequate.

REASONS:

In *Young* vs. *Canadian Northern Railway Company* (1931) A.C. 83 it was decided by the Privy Council that in the case of a collective bargain between a group or union of employees and an employer, a workman who cannot show privity by representation either authorized or adopted, or by statute cannot claim it, has no right to call for the enforcement of the bargain. In the specific case, an employee who was not a member of the trade union that had negotiated a collective agreement with its employer, tried to claim on the basis of the collective agreement, stating that the collective agreement formed part of his contract of employment. Evidence was led to show that the employer had applied the collective agreement to the Plaintiff as though he were a member of the trade union. It was held that the Plaintiff's action should be dismissed. But the Privy Council went further, and in delivering its judgment, Lord Russell of Killowen stated at page 89:

"But the matter does not quite rest there. When Wage Agreement Number 4 is examined, it does not appear to their Lordships to be a document adapted for conversion into or incorporation with a service agreement, so as to entitle master and servant to enforce inter se the terms thereof. It consists of some 188 rules which the railway companies contract with Division Number 4 to observe. It appears to their Lordships to be intended merely to operate as an agreement between a body of employers and a labour organization by which the employers undertake that as regards their workmen, certain rules beneficial to the workmen shall be observed. By itself it constitutes no contract between any individual employee and the company which employs him. If an employer refuses to observe the rules, the effective sequel would be, not an action by any employee, not even an action by Division Number 4 against the employer for specific performance or damages, but the calling of a strike until the grievance was remedied".

The foregoing case has not been followed in two of the three Canadian cases following it dealing with the same issue. In *Nelsons Laundries Limited* vs. *Manning* (1965) 51 D.L.R. 2nd 537, the British Columbia Supreme Court considered a collective agreement between the Plaintiff Laundry and Dry Cleaning firm and the union representing its driver salesman. The collective agreement provided that the union and each employee covenanted and agreed with the company that for six months after the termination of the employment of any employee, the employee would not solicit patronage on anyone's behalf from any customers of the Plaintiff company. It was held that the individual contract of service between the Plaintiff and the Defendant included by implication of the restrictive covenant found in the collective agreement: "In the absence of evidence to the contrary, the terms of the contract of service were those terms of the collective agreement which deal with the rights and obligations between the employer and the employee. The covenant was a reasonable one for the protection of both the company and the other employees, and was clear." (from the headnote). In the course of delivering judgement, Dryer, J., after discussing the *Young* vs. *C.N.R.* case, stated at page 542:

"Further, I am by no means satisfied that collective agreements cannot be enforced, in the absence of an express agreement to the contrary, by and against the employees covered by them. The legislation mentioned above (the B.C. Labour Relations Act) provides for certification of trade unions upon proof of representation by the majority of the employees concerned and employer's trade unions so certified to bargain on behalf of employees in the bargaining unit whether they are members of the union or not. This was not the case in 1931. It may have been appropriate then to leave a non-member with no remedy as is suggested by the Judicial Committee of the Privy Council at page 650 D.L.R. of their judgement, but it would not be so today. Since the enactment of such legislation, collective agreements have come to be accepted as being entered into by a union on behalf, not only of itself, but also of the employees it represents. This community of obligation is recognized in Sections 20 and 21 of the Labour Relations Act, R.S.B.C. 1960, c. 205, but also exists quite independently of specific legislative provisions, and if, as agent for employees represented by it, a union commits them to do or refrain from doing any act after their employment is terminated, the law should enforce performance."

The decision in the *Nelsons Laundries* case was followed in *Re Prince Rupert Fishermen's Co-operative Association and United Fisherman and Allied Workers' Union* (1968) 66 W.W.R. 43, another case before the British Columbia Supreme Court. In that case a collective agreement containing provision for the submission of grievances to arbitration expired and despite negotiations no new agreement was reached. Thereafter the union, intervening on behalf of a group of employees, sought to submit the dispute to a board of arbitrators contending that

notwithstanding the expiry of the collective agreement and the fact that no new agreement had taken place, the provision for arbitration contained in the expired agreement must be imported as a term of the employees' contracts of service since no changes in their conditions of employment had occurred. The court held that the provision for arbitration was a term of the employees' contracts of service and could validly be invoked by the union on their behalf, and that the expiry of the collective agreement did not of itself affect the employment contract. At page 47, Verchere, J., stated:

"I am indebted to my brother Dryer for his judgement in Nelsons Laundries Limited vs. Manning . . . I am aware that in that case, unlike here, the collective agreement was in force when the Defendant Manning did the act which was held to be a contravention of his contract of service. But that is, I think, only a point of distinction and not one creating any real difference because here, as there, what is sought to be enforced, is a term of contract of employment between the association and its several former employees, namely, the right to have a dispute with their employer determined by arbitration. That right would have become the term of the contract of employment when the contract was made and it cannot be said, in my view, that the dissolution of the source from whence it came by the termination of the collective agreement would by that fact and nothing more cause the imported term also to dissolve and to disappear from the contract of employment.

There is support for this point of view in the Quebec case of Paschkes vs. Imprimerie Populaire Limitee (1957) R.L. 449, which is abridged in English in 1957 Can. Abr. 523. There the same view was indicated of the effect on the contract of employment of the terms of the collective agreement as that expressed in the Nelsons Laundries case and it was also indicated, as I have said above, that the expiry of the collective agreement does not of itself affect the employment contract.

I have looked at the evidence before me to find anything "to indicate the contrary stipulation" to the importing of the terms of the collective agreements into the employment contracts and found nothing."

However, in a case much more directly on point, in 1944 the Manitoba Court of Appeal had before it a dispute between a teacher and its school board. The case is *Bryson* vs. *Glenlawn School District* (1944) 3 D.L.R. 636. In this case, a teacher entered into a contract of hiring with a school board in the form prescribed by the Public Schools Act; her contract provided that the employment might be terminated by notice given at least one month prior to December 31st or June 30th. A rule of a local of a Teachers' Federation submitted to the school board provided that a teacher who was employed for at least three months should not be dismissed without being given an opportunity of having her case heard and investigated. It was held by the Court of Appeal that since the rule had not been formally adopted by the Board, it did not assist the dismissed teacher. However, in the course of the judgement, Bergman, J.A., went on to consider the question of the effect that the rule might have even if it had been adopted by the school board: At page 640 and 641 he stated that the decision in *Young* vs. *C.N.R.* precluded the matter, and that any collective agreement arrived at between the Federation and the board could not be enforced by an individual teacher against the board for lack of privity (see quotation from his decision earlier in this memo).

The decision in the *Bryson* case was noted in *Nelsons Laundries Limited* at page 544 where the court referred to a statement by Bergman, J.A., that the teacher could not enforce the contract for lack of privity and stated:

"This principle does not dispose of the case at bar because in it the Plaintiff relies not on the collective agreement as such, but on an agreement alleged to exist between the Plaintiff and the Defendant incorporating the terms of the collective agreement applicable to a contract of service and no express contrary stipulation or agreement is alleged."

It is submitted that the court in the *Nelsons Laundries* case misunderstood the facts in the *Bryson* case and did not know that under the Public Schools Act a standard form of contract between the teacher and its school board was provided for and was executed.

On balance, the decision in the *Nelsons Laundries Limited* case is a more reasonable decision in the light of today's labour relations legislation and the relationships between employer and employee. However, the *Nelsons Laundries* case is the decision of a single Judge, followed only in Re *Prince Rupert* by another single Judge. Against it it has the Privy Council's decision in the *Young* vs. *C.N.R.* case, and also the Court of Appeal of Manitoba in *Bryson* vs. *Glenlawn School District* (even though the statement by Bergman, J.A., is obiter dicta, and not commented upon by another member of the Court of Appeal).

In the final analysis, it can only be said with certainty that the present contractual relationship between a teacher and his school board, as found in the form of contract prescribed by Regulation 208 under the Department of Education Act, Revised Regulations of Ontario 1970, is inadequate to carry out the intention of incorporating within the terms of the individual contract the collective agreements which are negotiated and struck from time to time between the employers and the employees.

REFERENCES:

Halsbury's, *Laws of England,* 3rd edition
The English and Empire Digest, Volume 45,
Canadian Abridgment, 1st Edition and 2nd Edition
G. H. Treitel, *The Law of Contracts,* 3rd Edition

Appendix C: Statistical Data and Information

Some statistical information was included in Chapter 3. It was kept to a minimum because the Committee of Inquiry is of the opinion that statistical details must be relevant to the topic and helpful to the reader in his interpretation of the material being presented. The statistical information which follows on succeeding pages has direct, or indirect, bearing upon information or ideas previously presented, but, in the main, the reader is left to relate it to the contents of this Report.

Exhibit A

Expenditure and General Legislative Grants — All School Boards, 1942-1972 inclusive (Ontario Department of Education).

Year	Public Elementary Expenditure	Grant	%	Separate Elementary Expenditure	Grant	%	Secondary Expenditure	Grant	%
1942	29,515,057	4,374,096	14.82	4,443,628	1,221,098	27.48	17,053,819	2,302,813	13.50
1943	31,343,305	4,866,215	15.53	4,768,004	1,251,301	26.24	17,271,477	2,257,166	13.07
1944	33,202,793	5,438,240	16.38	4,938,715	1,317,591	26.68	18,097,998	2,343,843	12.95
1945	37,482,688	15,413,695	41.12	5,650,999	2,397,249	42.42	19,832,025	8,924,187	45.00
1946	40,125,214	16,782,469	41.83	6,242,549	2,623,592	42.03	22,116,820	9,883,576	44.69
1947	46,580,239	16,891,611	36.26	6,868,237	2,589,250	37.70	25,336,336	10,723,572	42.32
1948	53,685,511	17,225,970	32.09	7,783,687	3,033,802	38.98	28,428,045	12,318,062	43.33
1949	59,132,874	20,789,553	35.16	8,754,696	3,581,512	40.91	32,193,261	13,220,202	41.07
1950	66,391,127	23,495,586	35.39	11,225,363	5,023,667	44.75	35,404,022	14,141,891	39.94
1951	80,498,208	25,789,048	32.04	13,742,696	5,838,650	42.49	42,178,906	15,727,445	37.29
1952	93,645,892	29,817,524	31.84	15,051,537	6,603,114	43.87	48,891,066	17,548,308	35.89
1953	103,030,625	30,976,000	30.06	16,487,357	7,451,871	45.20	51,916,371	19,453,389	37.47
1954	114,675,286	36,621,102	31.93	19,758,087	9,134,591	46.23	58,751,193	22,200,115	37.79
1955	130,926,682	39,260,847	29.99	22,990,594	10,516,673	45.74	68,251,228	22,584,611	33.09
1956	146,564,276	42,747,172	29.17	26,592,204	12,140,178	45.65	77,123,091	24,302,130	31.51
1957	164,529,372	52,720,012	32.04	31,634,738	15,141,596	47.86	88,197,441	29,115,931	33.01
1958	185,531,828	66,544,252	35.87	38,382,685	21,400,561	55.76	104,513,792	40,381,114	38.64
1959	212,778,779	73,964,411	34.76	45,910,637	26,356,908	57.41	124,264,706	48,264,763	38.84
1960	233,879,154	78,305,517	33.48	52,728,112	29,397,037	55.75	143,375,055	51,259,978	35.75
1961	251,592,273	87,135,917	34.63	59,379,087	34,440,679	58.00	163,885,079	59,969,896	36.59
1962	267,147,052	97,390,537	36.46	68,366,042	41,200,455	60.26	196,703,804	61,863,827	31.45
1963	284,151,606	105,952,784	37.29	77,041,278	48,053,197	62.37	221,967,844	76,038,948	34.26
1964	314,285,000	119,514,000	38.03	94,449,000	65,888,000	69.76	264,919,000	100,339,000	37.88
1965	347,054,000	129,521,000	37.32	109,788,000	76,529,000	69.71	300,992,000	119,911,000	39.84
1966	396,930,000	148,552,000	37.43	130,154,000	90,444,000	69.50	351,363,000	140,090,000	39.87
1967	456,422,000	172,688,000	37.84	162,296,000	120,249,000	74.09	429,424,000	167,663,000	39.04
1968	551,066,000	220,684,000	40.05	197,897,000	148,134,000	74.85	513,417,000	188,589,000	36.73
1969	627,902,000	254,892,000	40.59	227,476,000	171,917,000	75.58	606,079,000	252,777,000	41.71
*1970	707,278,000	303,930,000	42.97	259,650,000	207,510,000	79.92	672,581,000	333,139,000	49.53
*1971 Est.	763,902,000	361,303,000	47.30	290,533,000	234,084,000	80.57	744,508,000	405,230,000	54.43
*1972 Est.	821,847,000	413,521,000	50.32	316,117,000	260,972,000	82.56	822,036,000	462,507,000	56.26

Totals	Expenditure	Grant	%
1967	1,048,142,000	460,600,000	43.94
1968	1,262,380,000	557,407,000	44.16
1969	1,461,457,000	679,586,000	46.50
*1970	1,639,509,000	844,579,000	51.51
*1971 Est.	1,798,943,000	1,000,617,000	55.62
*1972 Est.	1,960,000,000	1,137,000,000	58.01

*The expenditure amounts for years 1970, 1971 and 1972 represent net expenditure. Their content varies from the expenditure figures for years 1969 and prior to the extent that provisions for reserves and Reserve Funds are excluded and they are reduced by miscellaneous revenues from sources other than local taxation and Provincial Grant.

February 18, 1972

Exhibit B1

Formula to Determine Changes in Teachers' Salary Schedule to Reflect Economic Conditions as Agreed by Vancouver School Board and Vancouver Elementary and Secondary Teachers Associations

June 1970

The parties have agreed changes in teachers' salary schedules reflect economic conditions and status aspects. The parties have agreed to the following formula to determine the change in the schedule as a result of economic conditions. Bargaining in the normal course will take place with respect to status aspects. It has been agreed that changes due to status aspects are relatively small compared to changes resulting from economic conditions in any year. In fact, it has been agreed status changes do not have to take place every year.

Item	Weight
1) **Average Weekly Wage & Salary (Vancouver)** December 1969 to June 1970 December 1968 to June 1969 as a % (AWW & S is the composite of salaries paid in the Greater Vancouver area and reflects a broad cross-section of the community)	5
2) **Forest Industry** Percentage change in average industry wage comparing applications of 1970 agreement to average prevailing at end of 1969 agreement. (The settlement between Forest Industrial Relations and the International Woodworkers of America is considered a keystone settlement in the province)	1
3) **Provincial Civil Service** The percentage change in civil service rates in April, 1970.	1
4) **Municipal Employees** The percentage changes in 1970 for: V.S.B. Inside Workers (Local 15) ¼) V.S.B. Outside Workers (Local 407) ¼) City Firemen ¼) City Police ¼)	

Note

1. All of the changes will be measured in terms of changes in levels and will be the changes which have taken place since the last bargaining period with the teachers.

2. For future years, the dates would be altered.

Exhibit B2
Vancouver Formula to Determine Changes in Teachers' Salary Schedule.

Vancouver Formula To Determine Changes In Teachers' Salary Schedule

I. FORMULA as applied to 1971 teachers' salary increases
(as calculated in fall of 1970)

Item		
1. Average Weekly Wage and Salary (Vancouver) $\frac{\text{Dec/69 + Jan/70 + Feb/70 ... + June/70}}{\text{Dec/68 + Jan/69 + Feb/70 ... + June/69}} = \frac{918.25}{853.60} = 7.57\% \times 5$		= 37.85
2. Forest Industry $\frac{\text{Increase in FIR-IWA Coast agreement including adjustments}}{\text{Average Hourly Rate paid Jan-May 1970 as base}} = \frac{\$0.3182}{\$3.785} = 8.41\% \times 1$		= 8.41
3. Provincial Government and B.C. Civil Service Rate increases plus adjustment in April = 7.50% x 1		= 7.50
4. Municipal Employees		
V.S. Board — Inside Workers	7% x .25	
V.S. Board — Outside Workers	7% x .25	
City and Firemen	7% x .25	
City and Police	7% x .25	
	7% x 1	= 7.00
	TOTAL	60.76
	÷ 8	= 7.595%

II. FORMULA as applied to 1972 teachers' salary increases
(as calculated on July 21, 1971)

Item		
1. Average Weekly Wage and Salary (Vancouver) $\frac{\text{July/70 + Aug/70 + Sept/70 ... + Jan/71}}{\text{July/69 + Aug/69 + Sept/69 ... + Jan/70}} = \frac{953.29}{895.28} = 6.480\% \times 5$ (Using last seven months available)		= 32.400
2. Forest Industry $\frac{\text{Estimate of FIR-IWA increase}}{\text{Estimate of base}} \quad \frac{\$0.315}{4.103} = 7.677$		= 7.677
3. Provincial Government and B.C. Civil Service B.C. Civil Service — 6½% + adj. = estimate of 7.00% x 1		= 7.000
4. Municipal Employees		
V.S.B. and Inside	= 7.00% x 0.25 = 1.75	
V.S.B. and Outside	= 7.00% x 0.25 = 1.75	
City and Firemen	= 17.27% x 0.25 = 4.316	
City and Police	= 16.40% x 0.25 = 4.10	
	11.916% x 1	= 11.916
	TOTAL	58.993
	÷ 8	= 7.374%

Exhibit C1

Average Personal Income and Earnings Statistics Compared with Teachers' Average Salaries, Ontario, 1910 to 1969. (This Exhibit is Table 1 of the submission of the Ontario Teachers' Federation to the Committee of Inquiry, supplemented by further material supplied by Mr. Wilfrid Brown who prepared the said Table 1. Sources are acknowledged in the O.T.F. Brief, page 9).

Average Personal Income and Earnings Statistics Compared with Teachers' Average Salaries, Ontario, 1910 to 1969

Years	Personal Income Per Capita	Average Weekly Wages and Salaries	Teachers' and Principals' Average Salaries						
			Elementary Teachers	Principals	Total	Secondary Teachers	Principals	Total	Grand Total
1910					$ 485			$1114	$ 522
1920					873			1806	934
1926	$ 496				1213			2287	1312
1929	568				1238			2346	1361
1933	338				1242			2338	1390
1938	460				1131			2162	1288
1941	666				1200			2179	1347
1947	962	$ 37.16			1656			2640	1777
1948	1069	41.26			1915			2915	2024
1949	1120	44.36			2109			3093	2199
1950	1182	46.58			2260			3319	2365
1951	1325	51.69			2395			3428	2485
1952	1410	56.36			2733			3916	2812
1953	1459	59.66			2984			4151	3035
1954	1446	61.36			3117			4481	3217
1955	1504	63.55			3259			4634	3363
1956	1594	66.86							3592
1957	1758[1]	70.56							3818
1958	1798	73.20							4113
1959	1862	76.39							4441
1960	1904	78.71	$4012	$5372	4175	$6836	$ 9943	7027	4825
1961	1908	81.15	4175	5583	4346	7021	10593	7230	5027
1962	2007	83.66	4293	5922	4487	7069	11149	7303	5198
1963	2111	86.53	4412	5874	4608	7120	11669	7359	5365
1964	2222	89.82	4483	6421	4711	7256	12241	7495	5531
1965	2409	94.41	4657	6788	4904	7484	12758	7730	5776
1966	2648	99.37	4884	7372	5166	7156	10842	8035	6084
1967	2842	105.86	5347	7309	5759	7936	11294	8684	6773
1968	3065	113.52	6123	9808	6578	8498	12968	9583	7587
1969	3368[2]	121.52			6883			9825	7899

[1] Data from 1957 is based on the revised system of national accounts.

[2] 1969 data estimated by the Ontario Department of Treasury and Economics.

Exhibit C2

Teachers' and Principals' Average Salaries Shown as an Index of Personal Income per Capita, Ontario, 1926 to 1969. (This Exhibit is Table 3 of the submission of the Ontario Teachers' Federation to the Committee of Inquiry, supplemented by further material supplied by Mr. Wilfrid Brown who prepared the said Table 3).

Teachers' and Principals' Average Salaries Shown as an Index of Personal Income Per Capita, Ontario, 1926 to 1969[1]

Years	Elementary	Secondary	Total
1910			
1920			
1926	2.45	4.61	2.65
1929	2.18	4.13	2.40
1933	3.67	6.92	4.11
1938	2.46	4.70	2.80
1941	1.80	3.27	2.02
1947	1.72	2.74	1.85
1948	1.79	2.73	1.89
1949	1.88	2.76	1.96
1950	1.91	2.81	2.00
1951	1.81	2.59	1.88
1952	1.94	2.78	1.99
1953	2.05	2.85	2.08
1954	2.16	3.10	2.22
1955	2.17	3.08	2.24
1956			2.25
1957			2.17
1958			2.29
1959			2.39
1960	2.19	3.69	2.53
1961	2.28	3.79	2.63
1962	2.24	3.64	2.59
1963	2.18	3.49	2.54
1964	2.12	3.37	2.49
1965	2.04	3.21	2.40
1966	1.95	3.03	2.30
1967	2.03	3.06	2.38
1968	2.15	3.13	2.48
1969	2.04	2.92	2.35

[1] Personal Income Per Capita = 1.00 in each year.

Source: Derived from Exhibit C1 (originally Table 1 of O.T.F. brief, Page 8).

Exhibit C3

Increases in Wage Rates and Cost of Living Indices Using 1961 = 100 as a Base. (Prepared by research assistant from various sources.)

Year	Average Of Teachers' Salaries	Average Weekly Wage	Construction Wage Rate	Consumer Price Index
1962	102.2	103.1	104.4	100.9
1963	106.9	106.8	108.1	102.6
1964	114.2	111.4	113.1	104.3
1965	122.3	116.8	118.6	106.9
1966	127.6	123.1	128.1	111.6
1967	148.5	130.1	140.8	114.9
1968	155.5	139.7	152.8	119.3
1969	166.4	150.1	164.5	124.1
1970	174.8	160.8	188.7	127.3

Increases in Wage Rates and Cost of Living

Indices using 1961 = 100 as a Base

Exhibit C4

Increases in Metro Toronto Teachers' Salaries, 1961 = 100 (Prepared by research assistant from various sources.)

Increases in Metro Toronto Teachers' Salaries, 1961 = 100

Year	Secondary Minimum	Secondary Maximum	Average	Elementary Minimum	Elementary Maximum	Average	Separate Minimum	Separate Maximum	Average
1962	100.0	105.5	102.8	100.0	107.9	103.9	100.0	100.0	100.0
1963	102.2	109.9	106.1	100.0	107.9	103.9	103.3	118.5	110.9
1964	106.7	113.2	109.9	106.1	110.5	108.3	113.3	135.1	124.2
1965	111.1	117.6	114.4	112.1	113.1	112.6	116.7	162.9	139.8
1966	120.0	123.1	121.5	124.2	119.7	121.9	116.7	162.9	139.8
1967	135.6	146.1	140.9	139.3	136.8	138.1	153.3	179.6	166.5
1968	142.2	148.3	145.3	145.4	140.8	143.1	160.0	196.3	178.2
1969	151.1	158.2	154.7	157.6	148.7	153.2	173.3	209.2	191.3
1970	160.0	168.1	164.1	163.6	156.6	160.1	180.0	220.4	200.2

Average increase in minima = 67.9

Average increase in maxima = 81.7

Total average increase = 74.8

Appendix D: List of Briefs Submitted

School Boards and School Board Associations

1. Atikokan Board of Education
2. Fort Frances-Rainy River Board of Education
3. Frontenac-Lennox and Addington County Roman Catholic Separate School Board
4. Grey County Board of Education
5. Hearst Board of Education
6. Huron County Board of Education
7. Lakehead Board of Education
8. Lambton County Roman Catholic Separate School Board
9. Lincoln County Board of Education
10. Lincoln County Roman Catholic Separate School Board
11. London, Board of Education for the City of
12. Middlesex County Board of Education
13. Metropolitan Toronto School Board
14. Niagara South Board of Education
15. Ontario Public School Trustees' Association
16. Ontario School Trustees' Council
17. Ontario Separate School Trustees' Association
18. Ottawa Board of Education
19. Sault Ste. Marie Board of Education
20. Sault Ste. Marie District Roman Catholic Separate School Board
21. Simcoe County Board of Education
22. Sudbury Board of Education
23. Timmins Board of Education
24. Wellington County Board of Education
25. Wentworth County Roman Catholic Separate School Board
26. Windsor, Board of Education for the City of
27. Windsor, Board of Trustees of the Roman Catholic Separate Schools for the City of
28. York, Board of Education for the Borough of

Associations of Teachers

29. Federation of Women Teachers' Associations
30. Frontenac County Teachers' Association
31. L'Association Des Enseignants Franco-Ontariens, Ottawa
32. Lincoln County Women Teachers' Association
33. Nipissing Women Teachers' Association
34. Ontario Secondary School Teachers' Federation
35. Ontario Secondary School Teachers' Federation, District #1
36. Ontario Secondary School Teachers' Federation, District #8
37. Ontario Secondary School Teachers' Federation, District #15
38. Ontario Secondary School Teachers' Federation, District #24
39. Ontario Secondary School Headmasters' Council
40. Ontario Teachers' Federation
41. Peterborough Elementary Teachers
42. Peterborough County Substitute Teachers' Association
43. St. Patrick's Separate School, Toronto
44. Teachers' Federation of Carleton
45. Toronto Supply Teachers
46. Toronto Teachers' Federation

Individuals and Other Groups

47. Bowley, R. E., Peterborough
48. Brown, James E., London
49. Canadian Manufacturers' Association
50. Christian Labour Association
51. Connor, Ralph
52. Devenish, C. C.
53. Harrison, Gordon F., Samson, Belair, Riddell Incorporated
54. Henneberry, James G. F.
55. Isbester, Fraser, McMaster University
56. Kelsey, Ian B., Vancouver School Board
57. McGoey, Paul, M.D.
58. McPhail, D. S., Willowdale
59. Ontario Federation of Labour
60. Rusin, Lenora (Mrs.), St. Catharines
61. Thomson, James (Mrs.)

Appendix E: Legislation, Letters and Literature from Other Jurisdictions

Letters (see pages 81 - 96

Copy of letter requesting information from Provinces of Canada and States of the United States.

Replies from Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Saskatchewan, California, Connecticut, Massachusetts, New York, Oregon, Michigan, Washington, Wisconsin.

Copy of letter requesting information from other countries.

Replies from Australian High Commission, Ottawa; Ambassade De Belgique, Ottawa; German Embassy, Ottawa; New Zealand High Commission, Ottawa; Royal Norwegian Embassy, Ottawa; Royal Netherlands Embassy, Ottawa.

Legislation and Literature

Alberta, Province of
The School Act, Chapter 329; and 1971 Amendment, Chapter 100.

The Colleges Act, Chapter 56.

Report of the Special Committee, appointed under Order-in-Council 645/64 . . . for the purpose of reviewing procedures for Collective Bargaining between School Trustees and Teachers . . .

Submissions of The Alberta Teachers' Association to the Special Committee of the Legislative Assembly on Collective Bargaining between School Trustees and Teachers (The ATA Magazine, October 1964).

British Columbia, Province of
Public Schools Act, Chapter 319.

Summary of Salary Scales, March 1971.

Education Finance in British Columbia 1971 (Economic Welfare Division, British Columbia Teachers' Federation).

Agreement Between Board of School Trustees and School District No. 39 (Vancouver) . . . and Vancouver Elementary School Teachers' Association.

Manitoba, Province of
The Public Schools Act, R.S.M. 1970, Part XVIII.

Agreement Between The School Division of St. James-Assiniboia No. 2 and The St. James-Assiniboia Division No. 2 of the Manitoba Teachers' Society.

New Brunswick, Province of
The Public Service Labour Relations Act of the Province of New Brunswick, December 1968.

Newfoundland, Province of
The Bulletin, Newfoundland Teachers' Association, March 30, 1971.

Nova Scotia, Province of
The Teaching Profession Act.

Quebec, Province of
73/le plan de classification (Ministère De L'Éducation, Gouvernement Du Québec).

Saskatchewan, Province of
The Teacher Salary Agreements Act, 1968.

Regulations Under The Teacher Salary Agreements Act.

Saskatchewan School Trustees Association: *Procedures of Negotiations.*

California, State of
Winton Act, as amended 1970.

Amendments, July 12, 1971.

Comments and papers on the Winton Act by Thomas A. Shannon, attorney for the San Diego Unified School District.

Joint Committee Report on The Winton Act Process of Meeting and Conferring, May 1971.

California School Boards Association and California Association of School Administrators: *Employee/Certificated Employee Relationship;* December 1970.

A Comprehensive Agreement between the Board of Education of the San Diego Unified School District and the San Diego Certificated Employee Negotiating Council, August 15, 1970 through August 14, 1971.

Institute of Industrial Relations, University of California (Berkeley): *California Public Employee Relations;* June 1971.

Connecticut, State of
Chapter 166 of the General Statutes of Connecticut as amended by Public Act 811 of the 1969 General Assembly.

Massachusetts, Commonwealth of
Report of the Task Force on Collective Bargaining in Public Education to the Massachusetts Board of Education, March 25, 1969.

Massachusetts Department of Education: *A Guide to Collective Bargaining in the Public Schools of Massachusetts.*

Minnesota, State of
A bill for an act relating to labor relations between public employees and their employers, amending Minnesota Statutes 1969.

New York, State of
American Arbitration Association: *What's Different About AAA Labor Arbitration?*

Voluntary Labor Arbitration Rules of the American Arbitration Association; as amended and in effect January 1, 1970.

Resolving Conflicts in Public Employment and Providing Other Professional Services.

Lieberman: *The Impact of the Taylor Act Upon the Governance and Administration of Elementary and Secondary Education;* June 1971.

New York State School Boards Association: *Negotiation News;* June 24, 1971.

New York State Public Employment Relations Board: *Question and Answers on the Taylor Law 1970.*

Oregon, State of
Board-Teacher Consultation Law As Amended.

Michigan, State of
Act No. 379 of the Public Acts of 1965.

Rhode Island and Providence Plantations, State of
An Act in Amendment of and in Addition to Title 28 of the General Laws Entitled "Labor and Labor Relations", as Amended, and Providing for the Settlement of Disputes Between Certified Public School Teachers and School Committees.

Washington, State of
Negotiations by Certificated Personnel, Chapter 28A.72.040, The Revised Code of Washington.

Washington Session Laws, 1965, Chapter 143 (House Bill No. 154).

Wisconsin
Laws of Wisconsin relating to Public Schools 1967.

Australia, Commonwealth of
Conciliation and Arbitration Act 1904-1961.

Industrial Arbitration Act 1940-1961, New South Wales.

Industrial Arbitration Act 1912-1963, Western Australia.

England and Wales
Department of Education and Science: *The Educational System of England and Wales.*

Alexander, Sir William: *A commentary on The 1971 Burnham Primary and Secondary Schools Report.*

Inner London Education Authority: *Salaries,* and other information booklets.

Hertfordshire County Council Education Committee: *Notes of Guidance for Governors of Schools; Instrument of Government and Articles of Government for County Secondary Schools; Articles of Government for County Secondary Schools.*

London Borough of Harrow Education Committee: *Conditions of Employment of Full-Time Established Teachers in Primary and Secondary Schools and Nursery and Day Special Schools Maintained By the Council of the London Borough of Harrow; Articles of Government of Secondary Schools Made by the London Borough of Harrow Pursuant to Section 17 of the Education Act, 1944;* and other information booklets.

Imperial Chemical Industries Limited: *ICI Staff Representation Survey; 1970 ici staff representation report; 1970 ici staff representation report appendices; Central Staff Conference Agenda, 6 July 1971;* and other information.

Federal Republic of Germany
Schultze and Fuhr: *Schools in the Federal Republic of Germany.*

Northern Ireland
Ministry of Education: *Memorandum on Employment of Teachers,* Paper No. 7.

Ulster Teachers' Union: *Rules and Constitution; Conference Handbook 1971/Report of the Central Executive Committee; An Introduction to Your Union for every Student Teacher and Young Teacher; UTU News,* May/June and September 1971.

New Zealand
New Zealand Education Act, 1964, No. 135, especially Parts V, VI and VII.

Norway
Law Concerning Public Service Disputes of 18th July, 1958.

The Netherlands
Salary scales valid for teachers in secondary education;

Royal Decree of the 19th day of January 1970, Official Gazette No. 13, on organized planning in respect of the legal status of teaching staff. (Decree on Planned Education).

March 2, 1971.

Dear Sir:

The undersigned is secretary to a Committee established by the Minister of Education for the Province of Ontario, to Inquire Into Negotiation Procedures between Teachers and Trustees in the Elementary and Secondary Schools of Ontario.

The Committee has advertised for briefs to be submitted by interested parties in Ontario and intends to hold public hearings in the near future. Naturally, the Committee is interested in finding out as much as possible about negotiation procedures in other jurisdictions.

With respect to your jurisdiction would it be possible, please, for you to let us have the following information:

1. Is there legislation outlining the negotiation procedures between Teachers and Trustees?
If there is, could we obtain a copy of the statute?

2. If there is no legislation, what course does the bargaining process take?

3. Do the Teachers have the right to strike?
If so, by what authority?

4. Is there any provision for compulsory arbitration?

5. If the Teachers do not have the right to strike, and there is no compulsory arbitration, what sanction is available to the Teachers?
Has any sanction ever been applied?

6. Are conditions of employment (e.g. class size, teaching assignments, number of teaching periods, etc.) negotiable items?
If they are not, is there any Teacher-Trustee consultation in the determination of working conditions?

7. Are Principals and Vice-Principals in the bargaining Unit?

8. What is the duration of an agreement, and what are its usual beginning and ending dates?

9. Is there any paper or article to which you can refer our Committee, covering the situation in your jurisdiction relevant to the inquiry being undertaken by the Committee in Ontario?

Yours sincerely,
Signed by
A. H. Dalzell,
Secretary to the Committee.

GOVERNMENT OF THE PROVINCE OF ALBERTA
DEPARTMENT OF EDUCATION

March 12, 1971

Dear Mr. Dalzell:

Your letter of March 2nd addressed to Dr. T. C. Byrne, Deputy Minister of Education, has been referred to me for reply.

It may be helpful for your committee to know that in Alberta all employed teachers must, as a condition of employment, belong to the Alberta Teachers' Association. This association is organized into locals which normally include all teachers employed by a school board, or in some cases by several school boards.

The following statements are intended to be in direct response to the questions in your letter.

1. Negotiation procedures between teachers and school boards are exactly the same as for most organized labor groups. These procedures are outlined in the Alberta Labor Act, a copy of which is being sent to you under separate cover. Also being forwarded is a copy of the School Act, 1970. Section 65 (6) of this act specifies that the Alberta Labor Act applies to boards, teachers and other employees of a board. A study of this Labor Act will answer many of your questions but I shall respond briefly to each of them anyway.

2. All bargaining processes are outlined by legislation (See Sections 56-80 of the Alberta Labor Act). Although in many cases negotiation takes place directly between one school board and one ATA Local, the rural school systems, particularly, tend to conduct bargaining through an employers' organization (See the Alberta Labor Act).

3. Teachers have the right to strike by authority of the Alberta Labor Act.

4. There is no provision for compulsory arbitration.

5. Teachers have the right to strike, threaten the use of this right quite frequently, and occasionally do go on strike. Nonetheless, the number of strikes over the years has been surprisingly small. I do not recall any occasion where a school board has employed a lock-out but this is possible.

6. According to the Alberta Labor Act all working conditions are negotiable. However, few conditions of employment actually become subjects of negotiation. School boards and teachers prefer to depend on mutual consultation outside the negotiating process for determination of many working conditions. It appears that both school boards and teachers value the flexibility in organization that exists when the salary agreement does not get too specific about too many items.

7. All professional personnel who require a teaching certificate as a condition of employment (except the Superintendent and his chief assistant) must be members of the ATA and as such normally fall in the bargaining unit. However, by mutual agreement between the ATA Local and the school board professional personnel housed in central offices may be excluded from the bargaining unit.

8. Most salary agreements in the past have been for one year, usually co-incident with the school year. However, traditional patterns are now changing and two year contracts are becoming more common. Most of the new agreements, whether for one year or two, co-incide with the calendar year, which in Alberta is also the fiscal year for school boards.

9. At the moment I can think of no suitable paper or article to which I could refer your committee. If I should see something in the near future which may interest you I will send you a copy.

I hope this information will be of use to your committee and on behalf of the Department of Education in Alberta, wish you committee every success in its efforts.

Sincerely yours,

Signed by
Daniel Ewasiuk
Research Assistant to the Deputy Minister

DEPARTMENT OF EDUCATION
VICTORIA, BRITISH COLUMBIA

March 10th, 1971

Mr. A. H. Dalzell, Secretary,
Committee of Inquiry,
Ontario Department of Education,
Ste. 201, 454 University Avenue,
Toronto 1, Ont.

Dear Mr. Dalzell:

Your letter of 2nd March has been referred to me for reply.

I must tell you at the outset that presently our Public Schools Act is undergoing certain revision and the first reading of these amendments has already been tabled in the Legislative Assembly. However, we are not expecting any significant changes with respect to the area of teacher-trustee negotiations which is your major concern. Under separate cover, I am sending you a most recent copy of the Public Schools Act for your use.

With respect to your specific questions, I shall reply to them as briefly as possible below, the numbers refer to your stated questions.

1. Yes

2. Not applicable.

3. There is no authority in the Public Schools Act for teachers to "strike" in the public schools of the Province of British Columbia.

4. Yes — see Public Schools Act, Division VII, Sections 136-143, inclusive.

5. Not applicable.

6. We do not believe that class size, teaching assignments, number of teaching periods, and the like are negotiable items under our Schools Act, as you will see in reading it. There has been considerable teacher-trustee consultation in the determination of working conditions, however, throughout many school districts in the Province of British Columbia in the past several years.

7. Principals and vice-principals are part of the bargaining unit.

8. Most agreements in the Province of British Columbia between district teachers' associations and school boards are signed for one-year periods beginning on 1st January and terminating on 31st December, which is the fiscal year for school boards in this province. In the past, and very rarely, there have been two-year contracts but at the moment I do not believe any exist in this province.

9. I think the information required here is covered in the copy of the Public Schools Act which is being sent to you.

Yours very truly,

Signed by
W. D. Reid,
Assistant Superintendent
(Field Services)

DEPUTY MINISTER OF EDUCATION, MANITOBA
WINNIPEG 1

March 15, 1971.

Dear Mr. Dalzell:

Dr. Lorimer has asked me to reply to your letter of March 2, 1971, requesting information on teacher-trustee negotiations in the Province of Manitoba.

I am enclosing a copy of Part XVIII of The Public Schools Act, R.S.M. 1970, which contains the legislation governing negotiation procedures between teachers and trustees in the Province of Manitoba.

For your information, I would point out the following:

1. The Manitoba Teachers' Society, through its local associations, represents all teachers in Manitoba, Kindergarten to Grade 12. It does not, however, represent any teachers at the post-secondary level in either community colleges or universities.

2. Teachers in Manitoba, do not have the right to strike (See Section 384, subsection (1)).

3. A recommendation is being made to the Minister of Youth and Education suggesting changes in the method of choosing the panel of chairmen of boards of arbitration (See Section 387, subsection (5)).

4. You will note that the present method of concluding an agreement follows a clearly marked pattern — collective bargaining, followed by conciliation, followed by arbitration. The arbitration award is binding on both parties.

5. In Manitoba, all items regarding salaries and working conditions are negotiable, provided both sides agree to negotiate. Thus it has happened that items such as class size, teaching assignments, number of teaching periods, etc., have been negotiated.

6. Principals, vice-principals, and supervisors are members of the bargaining units; superintendents and assistant superintendents are not.

7. An agreement normally runs from January 1, to December 31, of a given year. However, some agreements for two years have recently been signed. The tenure of an agreement is also a matter which is negotiable.

8. I am not aware of any studies, investigations, or inquiries, which have taken place in the last decade; therefore, we have no reports of recent vintage which would be of value to your investigations. However, I am enclosing a copy of an agreement recently concluded between teachers and trustees of a large metropolitan school division. *You are at liberty to show this to members of your board of inquiry, but please treat it as a confidential document beyond that point.*

We would be very pleased to receive any interim or final report which is published by your Committee of Inquiry.

Yours sincerely,

Signed by
G. W. Battershill,
Assistant to the Deputy Minister.

DEPARTMENT OF EDUCATION
FREDERICTON
NEW BRUNSWICK

March 10, 1971

Dear Mr. Dalzell:

In reply to your letter of March 2nd, I am forwarding to you, under separate cover, a copy of the Public Service Labour Relations Act of the Province of New Brunswick, proclaimed in December, 1968.

This Act outlines the negotiation procedures between the teachers of the Province of New Brunswick and the Treasury Board of the Provincial Government.

In answer to the questions that you have raised, I trust that the following answers may be of some assistance:

1. Legislation outlining negotiation procedures is outlined in the Public Service Labour Relations Act.

2. Not applicable.

3. Teachers have the right to strike following a deadlock at the conciliation board level. You will note from the Public Service Labour Relations Act that the employer is asked to designate essential services prior to the naming of a conciliation board.

4. There is provision for compulsory arbitration.

5. Not applicable.

6. Salaries and financial allowances, as well as conditions of employment are negotiable. The first set of negotiations between the New Brunswick Teachers' Federation and the Provincial Treasury Board has been underway since the first of January. During the latter part of February, negotiations broke down over monetary items, including salaries. At present, a conciliation board is being established. The Teachers' Federation has asked all of its members to prepare resignations and forward them to the Federation, presumably to be used in the event of a deadlock at the conciliation board stage of negotiations.

7. Principals and vice-principals are in the bargaining unit.

8. It is anticipated that a two-year agreement will be signed. Since January 1, 1967, the New Brunswick Teachers' Association has entered into two agreements with the Minister of Education. The first agreement was of two years' duration, while the next agreement was of two and one-half years' duration.

9. The Treasury Board of the Provincial Government has a section known as the Personnel Policy Division, that is responsible for negotiating with public employees under the terms of the Public Service Labour Relations Act. The Government negotiator in the present round of negotiations with the New Brunswick Teachers' Federation is Mr. James Dalzell. Should you require additional information on the details of salary negotiations in this Province, I suggest that you write to Mr. Dalzell at the following address: Personnel Policy Division, New Brunswick Government Treasury Board, 751 Brunswick Street, Fredericton.

I hope that the above information may be of some value to you.

Yours very truly,

Signed by
G. E. Malcolm MacLeod
Assistant Deputy Minister

GOVERNMENT OF NEWFOUNDLAND AND LABRADOR
DEPARTMENT OF EDUCATION
ST. JOHN'S

March 12, 1971

Dear Mr. Dalzell:

This is a reply to your letter of March 2nd to Mr. P. J. Hanley.

I will answer the questions you raised in the order in which they appear in your letter.

1. There is no legislation, at the moment, governing negotiation procedures between teachers and school boards. However, there was a piece of legislation enacted at the last session of the House of Assembly, but not yet proclaimed, which deals with collective bargaining for employees in the public service and employees who derive their salary from Government sources either directly or indirectly. At the moment, I understand that regulations are being drafted under the authority of this legislation. The legislation and the regulations will probably come into force next year.

2. At the moment, salary negotiations between teachers and Government are taking place in accordance with collective bargaining procedures even though there is no legislation. In the past, the Teachers' Association usually sumitted briefs to the Department of Education or to the Government when salary increases were sought. Since there is a provincial salary scale which is implemented by funds provided by the Government, and this scale is not increased by School Boards except in a few isolated cases, teachers have not negotiated with School Boards.

3. As far as I can determine, there is no provision in legislation for teacher strikes. In spite of this, however, a number of our teachers have been on strike for several weeks this winter. They did not return to their classes until a couple of days ago. If the strike had continued, it is possible that some School Boards could have ordered them back to work on the grounds that they were violating their contracts and there was no legal provision for withdrawing their services.

4. When the new legislation is proclaimed, there may be provision for arbitration or for the withdrawal of services, probably the latter.

5. As I suggested above, some of our teachers withdrew their services this winter even though there was no provision for it. To my knowledge, there was never any serious disagreement between the Teachers' Association and the Government over salaries in the past.

6. I do not think that the matters you referred to are negotiable items. Although, class size, or teacher salary allocations, is a matter that the N.T.A. has always discussed with Government Authorities. Of course, many conditions of employment are discussed by each individual teacher when he enters into an agreement to teach with the School Board.

7. Principals, vice-principals, and supervisory personnel are usually considered part of the teaching force for salary purposes.

8. In the past, salary agreements were not made for any definite period of time. However, now that we are entering into a system of collective bargaining this will no longer hold true.

9. I am not aware of anything in writing, relating to this Province, which would help you in your study.

I trust that these few comments are of some assistance to you.

Yours truly,

Signed by
C. Roebothan
Associate Deputy Minister

DEPARTMENT OF EDUCATION
NOVA SCOTIA

March 17, 1971

Dear Mr. Dalzell:

At Dr. Nason's request, I attach a copy of the Teaching Profession Act which contains most of the information requested in your letter of 2 March.

You will note that, under the terms of the Act, teachers are not prevented from striking if a settlement cannot be reached after contract negotiations have taken place between schoolboards and the Nova Scotia Teachers Union, official negotiating body for provincial teachers.

There is no compulsory arbitration as such, but the decision of the Conciliation Commission appointed by the Minister may be made compulsory by mutual agreement of the board and teachers concerned.

Conditions of employment are negotiable items and principals and vice-principals are included in the bargaining unit. The duration and dates of an agreement are also subject to negotiation and therefore they vary from board to board.

Although there is no further literature available, I believe that you will obtain a sufficiently clear explanation of Nova Scotia procedures from the Act itself.

Yours sincerely,

Signed by
(Mrs.) F. P. Lee,
Education Information Officer

DEPARTMENT OF EDUCATION
CHARLOTTETOWN
PRINCE EDWARD ISLAND

March 8, 1971

Dear Mr. Dalzell:

In reply to your request of March 2, 1971, I wish to advise as follows:

1. There is, at present, no legislation outlining negotiation procedures between teachers and trustees in this province.

2. Our present agreement was arrived at through negotiation between the P.E.I. Teachers' Federation and the provincial Departments of Education and Finance. These parties arrived at a mutually acceptable salary scale.

3. Teachers in this province do not have the right to strike.

4. There is, at present, no provision for compulsory arbitration.

5. No sanctions have ever been applied by teachers to date.

6. Conditions of employment have not, to date, been negotiable items. Working conditions are determined by the individual school boards with the consultation of the school administration.

7. Principals and vice-principals are part of the bargaining unit.

8. The present agreement is of three years' duration; from September 1, 1969 to August 31, 1972.

9. There is, at present, no printed material covering the situation in this jurisdiction.

Yours sincerely,

Signed by
Howard Jamieson
Executive Assistant to the Deputy Minister of Education

PROVINCE OF SASKATCHEWAN
DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY MINISTER

March 9, 1971.

Dear Mr. Dalzell:

This is in reply to your letter of March 2, 1971, addressed to the Deputy Minister of Education, Mr. L. H. Bergstrom. In your letter you raised a number of questions relating to teacher salary negotiations in Saskatchewan.

With regard to your first question, I wish to advise that there is legislation outlining negotiation procedures between teachers and trustees. In this regard, I am enclosing a copy of The Teacher Salary Agreements Act and the regulations pursuant to the Act.

There is no legislation prohibiting teachers from striking. In fact, there have been a number of strikes, usually of a relatively short duration, during the past two years.

Amendments are being made to The Teacher Salary Agreements Act at the current session of the legislature whereby the minister may send a dispute to compulsory arbitration once the conciliation period specified in the legislation has expired.

The matters which are negotiable are set out in the legislation. Generally speaking, it would be considered that general conditions of employment are not negotiable under the Act.

Principals and Vice-Principals are part of the bargaining unit.

The salary agreements may be for any number of years providing it starts on the first day of January in a given year and ends on the 31st of December. Thus, the agreement must coincide with the budget year for school systems in the province.

I would think that the legislation and the regulations are fairly straight forward and should provide you with the relevant background which you seek in this matter. If you have any further specific questions to raise I would be most happy to answer them.

Yours faithfully,

Signed by
L. C. Duddridge,
Associate Deputy Minister,
Administration.

STATE OF CALIFORNIA
DEPARTMENT OF EDUCATION
STATE EDUCATION BUILDING, 721 CAPITOL MALL,
SACRAMENTO 95814

March 17, 1971

Dear Mr. Dalzell:

Re: Your File GA 310

I have your letter of March 2 inquiring about California law on procedures for resolving disputes between public school teachers and school trustees. I shall answer your questions in the order in which they were asked:

1. I enclose a copy of our "Winton Act," which contains our law with respect to the obligation of public school governing boards to "meet and confer" with employee groups.

3. California follows the general common law rule that, in the absence of express statutory authority, public employees (including teachers) are without legal authority to strike against their public employers. There is no statutory provision for compulsory arbitration.

5. The California Teachers Association has applied a sanction to the extent that it has recommended to its members that they not accept employment with school districts where employment conditions are unsatisfactory to the association.

6. The subject matter on which governing boards and employees are to meet and confer is set forth in Section 13085.

7. Principals and vice-principals apparently are not placed in a category different from that of other credentialed employees.

9. I am sending you a copy of a memorandum on the 1970 Winton Act amendments prepared by Thomas A. Shannon, attorney for the San Diego School System and an outstanding scholar on school law.

You probably have heard that teachers in the Los Angeles Unified School System engaged in an unlawful strike last year. An agreement entered into between the parties in an attempt to resolve the dispute was declared invalid by our courts.

Very truly yours,

Signed by
Laurence D. Kearney
Administrative Adviser

STATE OF CONNECTICUT
STATE BOARD OF EDUCATION
P.O. Box 2219, HARTFORD, CONNECTICUT 06115

March 10, 1971

Dear Mr. Dalzell:

Reference is made to your letter of March 2, 1971, File G. A. 310 as noted, wherein you seek answers to nine questions. This inquiry relates to the negotiation procedures between teachers and trustees in the elementary and secondary schools of Ontario.

The answers to your questions are as follows:

1. Is there legislation outlining the negotiation procedures between teachers and trustees? If there is, could we obtain a copy of the statute?

Yes. The original act was passed in 1965, revised in 1967 and 1969. The present act is enclosed.

2. If there is no legislation, what course does the bargaining process take?

The bargaining process is legislated.

3. Do the teachers have the right to strike? If so, by what authority?

No. See Section 10-153e of the enclosure.

4. Is there any provision for compulsory arbitration?

There is no provision in the act.

5. If the teachers do not have the right to strike, and there is no compulsory arbitration, what sanction is available to the teachers? Has any sanction ever been applied?

Local teacher associations are encouraged to take "emergency action" by their state associations. Such action could be a state wide sanction censuring or condemning the local board of education or the community for not providing adequate funds. This is usually initiated by ad hoc committees and the results of the investigations and conclusions are circulated throughout the state. Local teachers assume only teaching assignments and refuse to perform any extra duties.

6. Are conditions of employment (e.g. class size, teaching assignments, number of teaching periods, etc.) negotiable items? If they are not, is there any teacher-trustee consultation in the determination of working conditions?

The law states that it is the duty of boards of education and professional employees to negotiate in respect to "salaries and all other conditions". There is no provision either limiting or stating specifically negotiable items. This is a matter of local resolution.

7. Are principals and vice-principals in the bargaining unit?

Under a "grandfather" clause administrators and teachers remain as a single unit. If, however, either unit gains separation through designation or election, teachers and administrators are separated and must remain as such.

8. What is the duration of an agreement, and what are its usual beginning and ending dates?

Agreements are usually one year but there are a number of two and three year contracts with reopeners, usually economic benefits. Dates of contracts normally begin September 1 and end on August 31 of the succeeding year.

9. Is there any paper or article to which you can refer our Committee, covering the situation in your jurisdiction relevant to the inquiry being undertaken by the Committee in Ontario?

None at this time.

I trust my answers have been helpful.

Very truly yours,

Signed by
William J. Sanders
Commissioner of Education

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF EDUCATION
182 TREMONT STREET
BOSTON, 02111

May 20, 1971

Dear Mr. Dalzell:

I have been directed to answer your communication relative to Collective Bargaining in the elementary and secondary schools in Massachusetts.

In 1965 by Chapter 763 of the Acts of 1965, Massachusetts passed "An Act Providing for the Election of Representative Bargaining Agent for Political Subdivisions of the Commonwealth."

The Department of Education plays no part in this Act. The only two official state agencies involved are the Board of Arbitration and Conciliation and the State Labor Relations Commission. Nevertheless, because of the great interest in the subject matter, the Board of Education appointed a Task Force representative of various public school organizations in Massachusetts as well as experts in the private sector to make a study of the Act and come up with recommendations.

I enclose, herewith, a Report of the Task Force On Collective Bargaining on Public Education which was submitted to the Massachusetts Board of Education, March 25, 1969 and was accepted by said Board.

I also enclose, herewith, the publication entitled "A Guide To Collective Bargaining In The Public Schools Of Massachusetts." In it on page one, you will note the broad representation involved.

I believe, between these two documents, you will find the answer to the questions which you have.

Sincerely yours,

Signed by
William J. Wallace
General Counsel

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
ALBANY, NEW YORK 12224

March 9, 1971

Dear Mr. Dalzell:

Your inquiry of March 2, 1971, has been referred to this office for reply.

The State of New York did enact a law, effective September 1, 1967, giving to all public employees in the state the right to negotiate collectively agreements covering their terms and conditions of employment. A copy of the said law, as amended, is included in the enclosed booklet, entitled, "Questions and Answers on the Taylor Law-1970," Page references hereinafter made will refer to the aforementioned booklet.

The State Education Department does not negotiate with school district employees. These employees negotiate directly with their local school board.

For a response to your inquiry numbered one (3), you are specifically referred to page 46, Section 210 of the Law, which deals with prohibition against employee strikes.

You are advised that there is no provision for compulsory arbitration in our statute concerning public employee bargaining. There are, however, provisions in our statute for mandatory mediation and Fact-Finding to assist the parties in reaching agreement. Section 209, 209-a and 210 on pages 43-52 deal specifically with the Fact-Finding and mediation process as well as the sanctions against prohibited practices.

Conditions of employment, as you will note from a copy of a negotiated agreement enclosed, are negotiable under our statute. The term, "Terms and Conditions of Employment," referred to in Section 201 (5) on page 35 has been interpreted to include every imaginable term and condition not specifically prohibited by other statutes.

Principals and vice principals are sometimes included in units with teachers but by and large either in a unit by themselves or have elected not to negotiate formally. There are approximately four teacher units for each principal unit. You are specifically referred to Section 207 on page 42 for the details of the statute as it pertains to unit determination.

Section 208 on page 43 deals specifically with the length of time for unchallenged representation on the part of employee organizations. Except for the inherent prohibitions within this section agreement can be for the periods the parties agree to. Agreements have been negotiated for periods of up to three years.

Enclosed, you will find additional pamphlets dealing with subject about which you inquired.

If we can be of any further assistance, do not hesitate to communicate with us.

Very truly yours,

Signed by
Vito F. Longo
Associate

OREGON BOARD OF EDUCATION
942 LANCASTER DRIVE NE, SALEM, OREGON 97310,
Ph. (503) 364-2171 Ext. 1602

March 10, 1971

Dear Mr. Dalzell:

Your letter of March 2, addressed to our Superintendent of Public Instruction, Oregon Board of Education, Dr. Dale Parnell, has been referred to me for reply.

I will try and answer your questions one at a time as follows:

1. Is there legislation outlining the negotiation procedures between teachers and trustees? If there is, could we obtain a copy of the statute?

Answer: Yes. We have enclosed a copy of this statute.

2. If there is no legislation, what course does the bargaining process take?

Answer: There is legislation.

3. Do the teachers have the right to strike? If so, by what authority?

Answer: No.

4. Is there any provision for compulsory arbitration?

Answer: No.

5. If the teachers do not have the right to strike, and there is no compulsory arbitration, what sanction is available to the teachers? Has any sanction ever been applied?

Answer: Impasse law and the sanctions by the Professional Association (Oregon Education Association). Both sanctions have been used a number of times.

6. Are conditions of employment (e.g. class size, teaching assignments, number of teaching periods, etc.) negotiable items? If they are not, is there any teacher-trustee consultation in the determination of working conditions?

Answer: No, they are not negotiable items. Yes, there is consultation under a Personnel Board Policy Committee.

7. Are principals and vice-principals in the bargaining unit?

Answer: Yes, but they may confer, consult and discuss separately or with the teachers.

8. What is the duration of an agreement, and what are its usual beginning and ending dates?

Answer: Annual and its beginning starts before the first day of October each year.

9. Is there any paper or article to which you can refer our Committee, covering the situation in your jurisdiction relevant to the inquiry being undertaken by the Committee in Ontario?

Answer: Yes, it is enclosed.

Please send us a copy of the summary of your findings.

If we can be of any further assistance, please do not hesitate to contact us.

Sincerely,

Signed by
Milt Baum, Director
Personnel and Community Relations

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING, MICHIGAN 48902

March 19, 1971

Dear Mr. Dalzell:

The Michigan Legislature amended the Public Employment Relations Act in 1965 to introduce into public employment the concept of collective negotiations.

Enclosed you will find a copy of this legislation, Act No. 379, of the Public Acts of 1965.

Very truly yours,

Phillip T. Frangos
Director, School Law and Legislative Affairs

STATE OF WASHINGTON
SUPERINTENDENT OF PUBLIC INSTRUCTION

April 27, 1971

Dear Mr. Dalzell:

We wish to acknowledge your letter of early March relating to negotiation procedures between certificated personnel and school boards in the State of Washington.

Enclosed for your study is a copy of our negotiations law, Chapter 28A.72 RCW. You will note that it contains no provision for compulsory arbitration.

Under a Washington State Supreme Court decision, teachers in this jurisdiction are prohibited from striking. From time to time, the Washington Education Association has invoked sanctions against school districts and boards, and in days of economic plenty the sanctions technique appears to prevent teachers from considering employment in districts against which sanctions have been invoked.

Your letter questions whether or not class size, teaching assignments, number of teaching periods, etc., are negotiable items. It is an unanswered question in our state at this time. Some boards claim that class size and teaching assignments are nonnegotiable items. The professional associations, however, hold that these relate to working conditions and therefore are clearly negotiable. To date we have not had a court test relative to these determinations.

Under current law, both principals and vice principals are permitted to be a part of the bargaining unit. The duration of any agreement executed between a school board and its teacher employees is good for only one school year.

Trusting this information will provide assistance,

Very truly yours,

Signed by
Llewellyn O. Griffith
Consultant, Administrative Services

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
William C. Kahl, State Superintendent
Archie A. Buchmiller, Deputy State Superintendent
126 Langdon Street, Wisconsin Hall, Madison, Wisconsin 53702

March 8, 1971

Dear Mr. Dalzell:

In response to your March 2, 1971 inquiry as to the negotiation procedures between teacher-employee groups and boards of education in the state of Wisconsin, please be advised that municipal employees have been granted the privilege of entering into labor negotiations with their employers for a number of years. I am enclosing a copy of the appropriate section of the statutes in Wisconsin law which provides the basic framework for this process.

In answering several of your questions be advised that the Wisconsin law does not provide the teachers the right to strike; however, that does not seem to be a deterrent since we have, in the early months of 1970, already had three major strikes of school districts by teacher organizations. At the present time there are no provisions for compulsory arbitration; however, the Wisconsin Legislature is considering such legislation at this time.

The only practicable sanction that may be applied against teachers is the threat of their non renewal of contract and dismissal from employment and public censor. Almost all the conditions of wages, hours and employment are subject to negotiations by the Teacher groups. Principals and vice-principals often are on the management bargaining team, but are generally not allowed as members of the employee group, since the job they hold is considered to be management. The duration of agreements is usually one year in length, although we are finding a number of cases where two year agreements are being negotiated.

I would suggest that you might want to contact Mr. Henry Weinlick, Executive Secretary, Wisconsin Education Association, 119 Monona Avenue, Madison, Wisconsin or Mr. George Tipler, Executive Secretary, Wisconsin Association of School Boards, P.O. Box 160, Winneconne, Wisconsin for further information on the points of view and available information from both the teacher employee group and the school board management group.

Sincerely,

Signed by
Archie A. Buchmiller
Deputy State Superintendent

FILE: GA 310

1st March, 1971.

Dear Sir:

The undersigned is secretary to a Committee established by the Minister of Education for the Province of Ontario, to enquire into Negotiation Procedures Between Teachers and Trustees in the Elementary and Secondary Schools of Ontario.

The Committee has advertised for briefs to be submitted by interested parties in Ontario and intends to hold public hearings in the near future. Naturally, the Committee is interested in finding out as much as possible about negotiation procedures in other jurisdictions and in other countries.

I have been instructed by the Committee of Inquiry to seek the assistance of your office in having forwarded to us copies in the English language of any statute or legislation pertaining to negotiations between teachers and trustees in the country which you represent, if such material is available.

The Committee of Inquiry would appreciate any help you can give us in this matter.

Yours sincerely,

Signed by
A. H. Dalzell,
Secretary to the Committee.

AUSTRALIAN HIGH COMMISSION
90 SPARKS STREET
OTTAWA 4

In reply quote No. 223/2/1/2

9 March, 1971.

Dear Mr. Dalzell:

In the absence of the High Commissioner, I am acknowledging your enquiry (your file GA310) for information and legislation relating to negotiations between teachers and trustees in Australia.

There are no local school boards in our country of the kind that exist in Ontario, but the wage and other working conditions for teachers are negotiated between the State (Provincial) Governments and the teachers unions and associations, in the case of Government schools, or between those unions and associations and the school boards in the case of individual private schools.

We have written to the Australian authorities asking them to forward any relevant Statutes or legislation in this field which I shall pass on to you as soon as they are received.

Yours sincerely,

Signed by
(J. Piper),
Counsellor.

AMBASSADE DE BELGIQUE
AMBASSADE VAN BELGIE

No. 2858/C1. 592 (AMS/jz)

Ottawa, March 30, 1971.

Dear Mr. Dalzell,

Referring to your letter of March 22nd I regret to inform you that I am not able to send you any statutes or legislation of Belgium, pertaining to negociations between teachers and school boards.

This matter is completely different in our country: there are no school boards as such in Belgium and complaints are normally dealt with on a private basis.

Yours sincerely,

Signed by
A. M. Stubbe,
Cultural Secretary.

DEUTSCHE BOTSCHAFT
GERMAN EMBASSY – AMBASSADE D'ALLEMAGNE
Ottawa 4, Ont.
1 Waverley Street
Telephone: 232-1101
Telex: 013 226 Dipgerm Ott
Telegramm: Diplogerma Ottawa

Please refer to: IV 4-80.00

June 8, 1971.

Re: File GA 310

Dear Mr. Dalzell:

Your inquiry concerning school administration in Germany was forwarded to the respective authorities.

I am afraid that the answer we received is only partly satisfactory to you. The only material concerning your special problem of negotiation procedures between teachers and trustees in the elementary and secondary schools which has been translated into English is attached. It is a chapter from the publication "Schools in the Federal Republic of Germany" containing a survey of the organisation of school inspection in the German Länder (provinces). There are of course numerous other publications on jurisdiction and similar matters in German schools but all of these are only available in German.

Please let me know whether such German texts would be of use to you. In this case I shall mail them to you.

Yours sincerely,

Signed by
(Dr. Helene Münscher)
Cultural Attaché

NEW ZEALAND HIGH COMMISSION
SUITE 804 COMMONWEALTH BUILDING
77 METCALFE STREET,
OTTAWA 4, CANADA

2 April 1971

Dear Mr. Dalzell,

I refer to your recent letter concerning your enquiry into negotiation procedures between teachers and trustees in Ontario.

Parts V and VI of the New Zealand Education Act 1964 deal with the appointment and employment of teachers, teachers' societies and the Court of Appeal for teachers in New Zealand. Under separate cover I am forwarding to you a copy of this pertinent legislation, together with a list of subsequent amendments.

If you require additional information, please do not hesitate to contact us again.

Yours sincerely,

Signed by
High Commissioner

ROYAL NORWEGIAN EMBASSY

Ottawa, April 29th, 1971

Dear Mr. Dalzell,

Referring to your letter of March 1st, 1971 and my preliminary answer on March 5th, I have the pleasure to enclose a copy of the Act of July 18th, 1958 about official service disputes. Unfortunately the Act has not been translated into English.

Teachers in Norway are normally local servants but disputes are dealt with in accordance with the above-mentioned law. They thus have questions concerning salaries and working conditions decided in a wage agreement contracted between their organization and the Government, (Department of price and wages). The negotiation is carried through in the same way as for civil servants and in accordance with the said act's regulations.

Yours sincerely,

Signed by
Jan E. Nyheim
First Secretary

AMBASSADE VAN HET KONINKRIJK DER NEDERLANDEN
ROYAL NETHERLANDS EMBASSY
275 Slater Street

No. 1335

Ottawa, March 8th, 1971.

Dear Mr. Dalzell:

In answer to your letter of March 1 (File: GA 310) requesting information concerning the procedure to be followed in the Netherlands by teachers applying for a position in elementary or secondary schools, I would like to inform you that under the Dutch educational system "negotiations" between applicants and trustees as such do not exist.

Education in the Netherlands is a matter of national concern. Under our laws, no person can apply for a teaching position at either a public or a private school unless he or she has obtained a certificate issued by a Board of examiners appointed by the (National) Minister of Education and Sciences.

Furthermore there is only one national salary scale for public or private schools alike, with salaries based on the level of training (at teachers' training schools, or universities), on reaching experience, and on the number of teaching hours.

It will follow from the above, that in the application procedure no "negotiation" is involved, and that interviews with school principals or trustees (of private schools) mainly center around the applicant's personality, his or her views on educational methods, and the like.

As I have no documentation on this subject, I have asked the Ministry of Education and Sciences at The Hague to supply me with whatever information, or documentation, that might be available.

I will communicate with you as soon as I have received an answer from The Hague.

Yours sincerely,

Signed by
J. A. van Alphen,
First Secretary
(Information and Cultural Affairs)

Appendix F: Public Hearings, 1971

(Only those who spoke at length have been listed.)

Toronto

May 5

Ontario Teachers' Federation (Mrs. Farr, Dr. Lamb, and Messrs. Richardson, Jones, Fife and Wilkinson).

Ontario School Trustees' Council (Dr. White and Messrs. Ronson, Muir and Stewart).

Ontario Separate School Trustees' Association (Messrs. McCabe, Sweeney, Sherlock, O'Donnell and Reverend R. Durocher).

Ontario Secondary School Teachers' Federation, District #15 (Messrs. Forster and Wilson).

Toronto Teachers' Federation (Messrs. Christie, Shukyn and Dr. Csapo).

May 6

Committee of Board Chairmen of Metropolitan Toronto (Messrs. Bone, Ross and Hill).

Mr. Donald McPhail and Mrs. Ruth Marshall.

Mrs. James Thomson.

Christian Labour Association (Messrs. Vandezande, and Gedraitis).

York County Board of Education (Messrs. Starr, and Chapman).

Supply Teachers in Toronto (Mrs. Olson and Mr. Pauli).

May 7

Federation of Women Teachers' Associations of Ontario (Misses Evans and Dyson).

Ontario Public School Trustees' Association (Messrs. Armitage, Smith, MacDonald and Muir).

Ontario Secondary School Teachers' Federation (Messrs. Wilkinson and Richardson).

St. Patrick's School and Ontario English Catholic Teachers' Association (Messrs. Doherty and Griffith).

Miss Dorothy Martin.

Sault Ste. Marie

May 12

Sault Ste. Marie District Roman Catholic Separate School Board (Messrs. Camiletti, La France, Morgan, and Soltys).

Sault Ste. Marie Board of Education (Dr. White, Dr. Lukenda and Messrs. Derby and Becking).

Informal discussion with Messrs. A. Prodan, N. Sloane, R. Tisdall, G. Nippers, R. Gauthier, J. Robinson, C. Brown, B. Hansen, G. Cond and Mrs. A. Harten).

Thunder Bay

May 13

Lakehead Board of Education (Messrs. Symington, MacKay and Gerow).

Dr. Hastings.

May 14

Fort Frances-Rainy River Board of Education (Mr. Taylor).

Sudbury

May 20

Sudbury Secondary School Teachers (Messrs. Carbone and Tyler).

Sudbury Board of Education (Dr. Flowers and Messrs. Thomson, MacLeod, and Allan).

Sudbury Public School Teachers (Mrs. Gauthier, Mrs. Lavoie and Mr. McKuen).

Sudbury Separate School Teachers (Mr. Boivin).

Timmins

May 21

Ontario Secondary School Headmasters' Council (Messrs. Book, Webb and Perry).

Cochrane-Iroquois Falls Board of Education (Mr. Cutten).

Kapuskasing Board of Education (Mr. Riefstahl).

Timmins Board of Education (Mrs. Behie, Mrs. Branscombe, and Messrs. Ferren and Vanstone).

Timmins Public School Teachers (Mrs. Chartrand, Mrs. Driscoll and Mr. Lessard).

Cochrane-Iroquois Falls Secondary School Teachers (Messrs. Gaughan and Czempinski).

North Bay

May 22

Nipissing Board of Education (Mr. Doney).

Nipissing Public School Teachers (Mrs. Ahola).

Nipissing Secondary School Teachers (Messrs. Larmer and Lewis).

Nipissing District Roman Catholic Separate School Teachers (Mr. Moore).

Nipissing District Roman Catholic Separate School Board (Mr. Jean-Louis Bourdeaux).

Ottawa

May 28

Teachers' Federation of Carleton (Miss Kerr).

Ottawa Board of Education (Mrs. Scotten, and Mr. Lawless).

Mr. Gordon Harrison.

L'Association Des Enseignants Franco-Ontariens (Messrs. Vaillancourt, Lachapelle, Gauthier, and Bélanger).

Hamilton

June 4

Wentworth County Roman Catholic Separate School Board (Dr. Mancini and Mr. Sherlock).

Mr. John Ronson.

Ontario Secondary School Teachers' Federation, District #8 (Messrs. Warrick and Lake).

Informal discussion with Messrs. D. Bailey, H. Smaller and R. Richardson and Mrs. Ruth Grove.

St. Catharines

June 5

Mr. James E. Brown.

Mr. C. C. Devenish.

Niagara South Board of Education (Dr. Railton and Mr. McLeod).

Mrs. Lenora Ruscio.

Lincoln County Board of Education (Messrs. Bradbury and Chapman).

Lincoln County Women Teachers' Association (Marion Baird, D. Flemington, S. Darling and M. Newby).

Kitchener

June 10

Wellington County Board of Education (Mr. Coxe).

Ontario Secondary School Teachers' Federation, District #24 (Messrs. Prudham, Murray, Baptie, Rankine).

London

June 11

Huron County Board of Education (Mrs. Wallace).

London Board of Education (Messrs. Ross and Murray).

Windsor

June 12

Ontario Secondary School Teachers' Federation, District #1 (Messrs. Paroian, Deneau, Dimmick and Lozinski).

Lambton County Separate School Board (Messrs. Tobin, Mundy and Pace).

Windsor Board of Education (Messrs. McDowell and Hawkens).

Peterborough

June 18

Informal discussion with Mr. Frank McGillen and Mr. John McPhee.

Peterborough Elementary School Teachers (Messrs. Micholls, Hood, and Rowat).

Peterborough Substitute Teachers' Association (Mrs. Moyer and Mr. Wagar).

Mr. R. E. Bowley.

Kingston

June 19

Canadian Manufacturers' Association (Mr. Wightman).

Frontenac-Lennox and Addington Roman Catholic Separate School Board (Monseignor Walsh and Mr. Hawkens).

Owen Sound

June 25

Grey County Board of Education (Messrs. Kuhl and Dawson).

Ontario Secondary School Teachers' Federation, District #4 (Miss Lawton and Mr. Neal).

Appendix G: Visits and Interviews, 1971

Washington, D.C.

June 24
Dr. Michael H. Moskow, Deputy Under Secretary For Economic Affairs and Program Co-ordination, United States Department of Labor.

Edmonton, Alberta

July 21
Mr. R. B. d'Esterre, Chairman Alberta Board of Industrial Relations; Dr. K. A. Pugh, Retired Deputy Minister of Labour, Alberta; Mr. D. Gardener, Deputy Minister of Labour, Alberta.

Mr. N. Leskiw and Mr. N. Hyrnyk; Alberta Teachers' Association.

Mr. L. Timko, Mr. N. Williams and Mr. B. Smith; Alberta School Trustees' Association.

Vancouver, British Columbia

July 22
Dr. S. Jamieson; University of British Columbia.

The Honourable Mr. Justice John Parker; Chairman, British Columbia Mediation Commission.

Mr. D. Grady and Mr. B. Watson; British Columbia Teachers' Federation.

Dr. Ian Kelsey; Vice-Chairman, Vancouver School Board.

Victoria, British Columbia

July 23
Mr. W. H. Sands, Deputy Minister of Labour, British Columbia.

South Pender Island (in lieu of Calgary)

July 23
Dr. A. W. R. Carrothers; President, University of Calgary.

Vancouver, British Columbia

July 24
Dr. Richard E. Lester; Chairman, Board of Governors, Simon Fraser University.

Burlingame, California

July 26
Mr. D. Wollett, Mr. George Whitman, and Mr. Jack Rees; California Teachers' Association.

Sacramento, California

July 27
Mr. J. Brooks, Mr. J. Claywitter, Mr. D. Montgomery and Mr. K. Cuddle; California School Boards Association.

Mr. Gerald Pangburn; California State Department of Education.

San Diego, California

July 28
Mr. Thomas Shannon, Mr. Wayne Spicer, Mr. Boyd Wilson, Mr. William Brown, Mr. George Ellis; San Diego Unified School District.

Montreal, Quebec

August 9
Dr. Maxwell Cohen; McGill University.

Mr. H. D. Woods; Chairman of Task Force on Labour Relations, and Professor of Economics, McGill University.

Albany, New York

August 10
Dr. Robert D. Helsby; Public Employment Relations Board.

Mr. Maurice Niese and Mr. Stanley Hinman; New York State School Boards' Association.

New York City

August 11
Mr. Arvid Anderson, Office of Collective Bargaining.

Dr. Myron Lieberman; Director Program Development and Administration, City University of New York.

Mr. Robert Coulson; American Arbitration Association.

Toronto

September 8
The Honourable Robert Welch, Minister of Education, and Dr. E. E. Stewart, Deputy Minister of Education.

September 13
Ontario Teachers' Federation (Miss Martin, Father Cavanaugh and Messrs. Jones, Fife, Richardson, and Gauthier).

Ontario School Trustees' Council (Dr. White, Mrs. Hendry and Mr. Ronson).

United Kingdom

September 27
Mr. V. H. Stevens; Assistant Secretary, Department of Education and Science for England and Wales, London.

Mr. R. S. Ball; Director of Education, London Borough of Harrow.

September 28
Mr. John Marsh, C.B.E.; Managing Director, British Institute of Management, London.

Sir William Alexander; Secretary, Association of Education Committees for England and Wales, London.

September 29
Mr. W. J. M. Garnett, C.B.E.; Director, The Industrial Society, London.

Mr. Edward Britton, General Secretary, and Mr. H. Pierce, Solicitor; National Union of Teachers for England and Wales, London.

September 30
Mr. L. Saunders; Assistant Education Officer, Inner London Education Authority.
Mr. J. A. G. Coates; General Manager — Personnel, Imperial Chemical Industries, London.

October 1
Dr. E. E. L. Owens, Deputy Education Officer; Society of Education Officers, Hertford.

October 4
Mr. W. C. H. Eakin; Director of Education, City and County Borough of Belfast, Northern Ireland.

October 5
Mr. Brian K. Toms; Executive Secretary, Ulster Teachers' Union, Belfast, Northern Ireland.
Mr. E. J. Kirkpatrick and Mr. D. W. Hudson; Ministry of Education, Bangor, Northern Ireland.

Montreal

December 2
Mrs. Shirley Goldenberg, McGill University.
Mr. Marc Lapointe, Q.C.

December 3
Mr. Aimé Nault, Commission des Ecoles Catholiques de Montreal.

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